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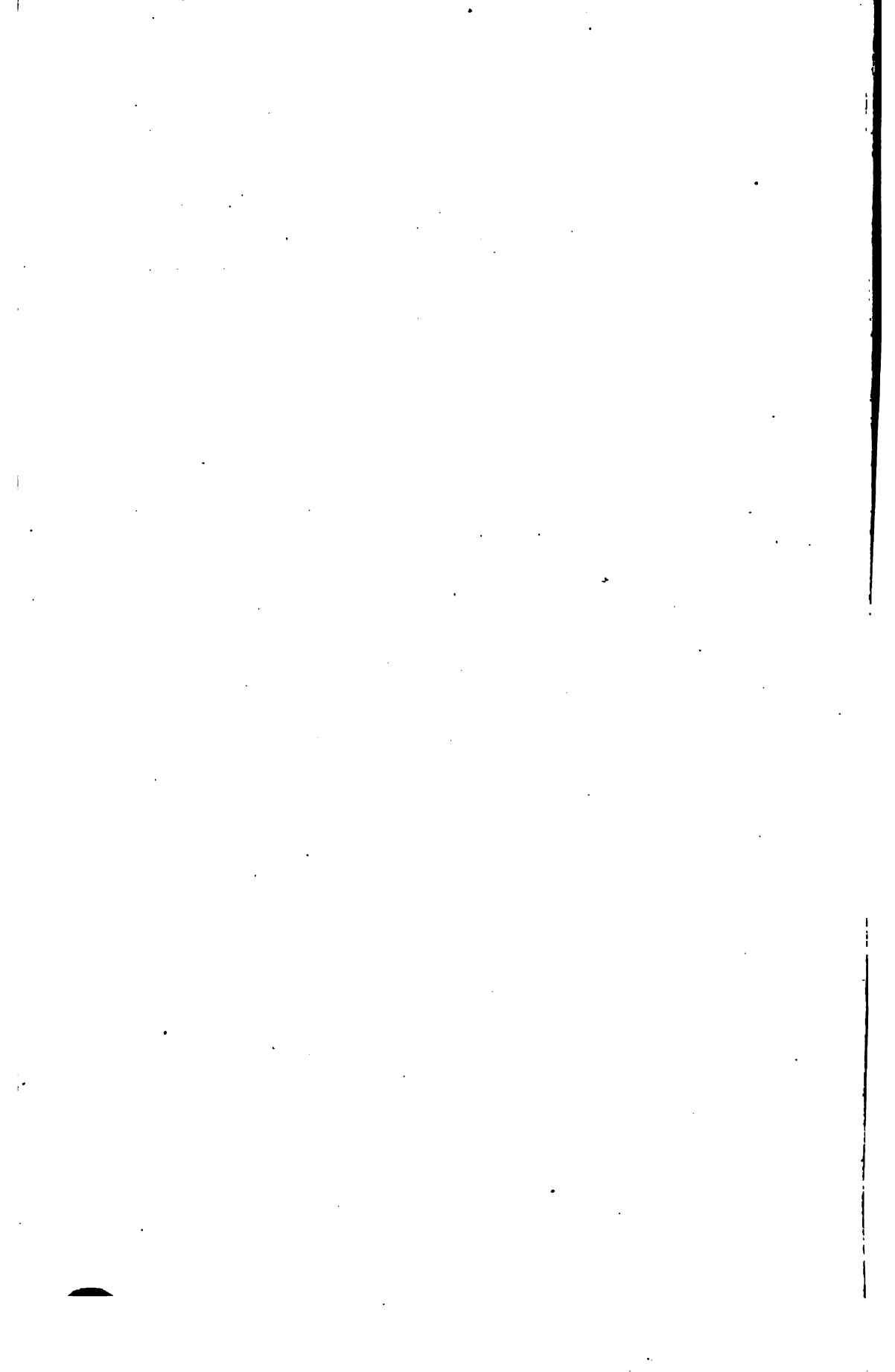
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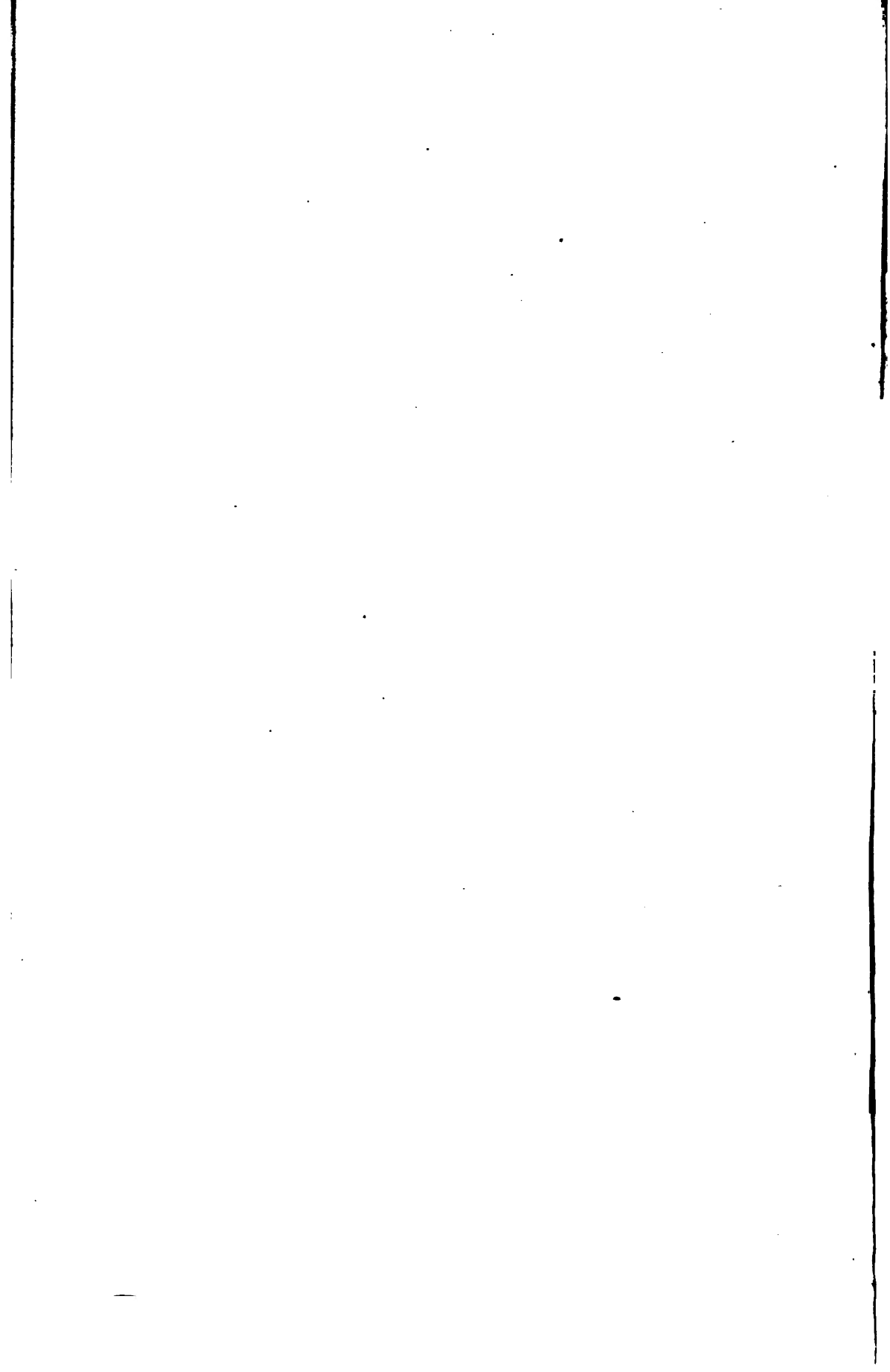
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BEING A THIRD EDITION OF

TUDOR'S CHARITABLE TRUSTS.

BY

LEONARD SYER BRISTOWE, M.A., Oxon.,

AND

WALTER IVIMEY COOK,

BARRISTERS-AT-LAW.

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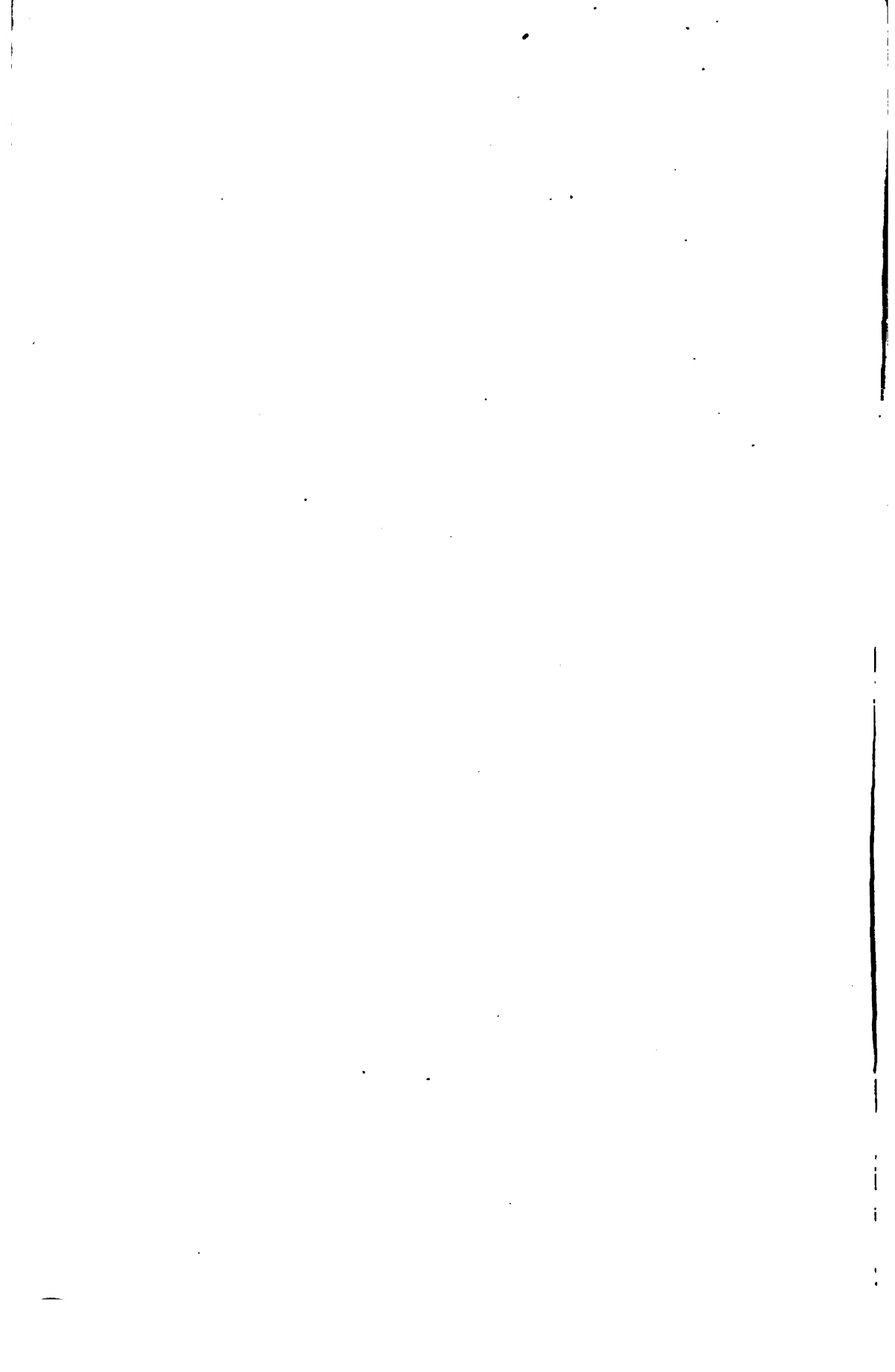
Chief Charity Commissioner,

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RESPECTFULLY DEDICATED.



PREFACE.

WHEN we undertook the present work our intention was to prepare a third edition of Tudor's Charitable Trusts. Before we had progressed far, however, we found that since 1862, when the last edition was published, the changes which had been effected in the law of charities by legislation and, to a less extent, by decided cases, rendered it impossible for us to proceed upon the lines usually adopted in preparing a new edition of an existing book. We therefore discarded our original plan and determined to employ Tudor's book merely as the foundation upon which to base a new work. The present treatise contains everything which was comprised in its predecessor, but it has been entirely re-written and re-arranged. We have at the same time enlarged its scope, and have aimed at rendering it a complete work on the law of charities and mortmain.

In dealing with the statutory portions of the law, we have adopted the plan of printing the Acts in full, and of treating the cases bearing upon and the questions arising in respect of them, in notes to the various sections. Part II. of the book contains the Mortmain and Charitable Uses Act, 1888, and Part III. all the Acts and portions of Acts relating to the Charity Commission. Each of these parts is preceded by a historical introduction. Some miscellaneous Acts, bearing more or less directly on the main subject, are printed in Appendix I.

In the notes to the Acts comprised in Part III. special attention has been directed to the practice of the Charity Commissioners, in the hope that the work may prove useful to Charity Trustees and others having dealings with the Commission. With this view, also, all the forms now in use at the Charity Commission are inserted in Appendix II., with a selection of schemes.

Reports of two cases, hitherto unreported, are printed in Appendix III. The same Appendix also contains two notes, one on the meaning of inhabitants and parishioners, the other on directory powers. These are matters which are not sufficiently connected with the law of charities to permit of their being inserted in the text of the work, and they are dealt with at too great length to allow of their insertion as foot-notes.

The Table of Cases contains references to all the Reports. Many Irish cases, and some Scotch, are included.

It only remains for us to record our gratitude to Sir Henry Longley, K.C.B., Chief Charity Commissioner, to Mr. C. Archer Cook, Assistant Commissioner, and to Mr. Henry Vane and others on the staff of the Charity Commission, for assistance of inestimable benefit to us, most kindly and patiently rendered.

L. S. B.

W. I. C.

1, NEW SQUARE.

4, STONE BUILDINGS.

November, 1889.

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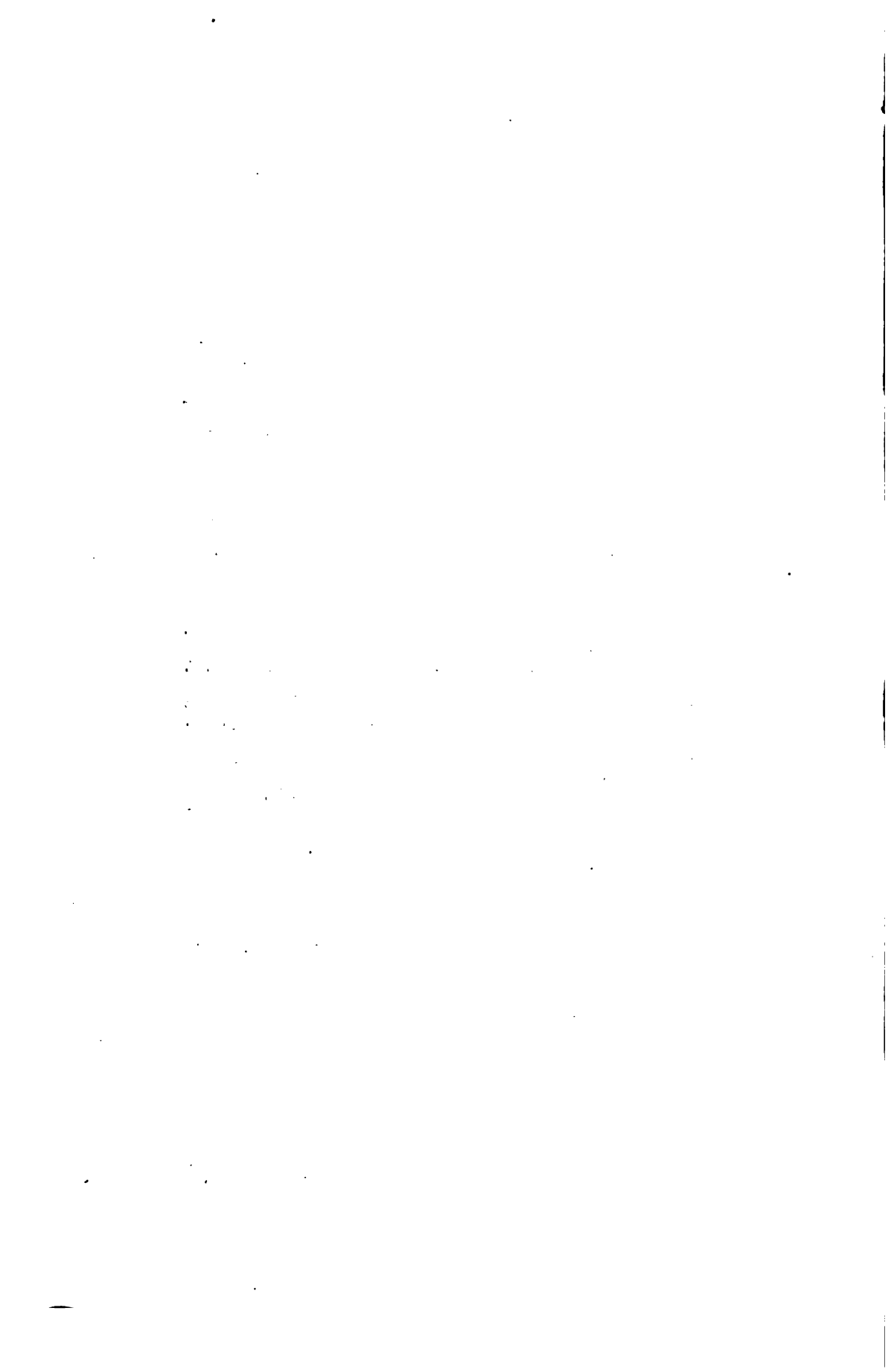
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c. 67 (Exp. Laws Contin.) - - -	<i>Add. p. xcv</i>

ADDITIONS AND CORRECTIONS.

- Page 3, note (r).—A legacy for providing legacies for Unitarians not under 50 years of age attending a certain chapel has been held to be charitable: *Re Wall, Pomeroy v. Willway*, 37 W. R. 779.
- 4, note (z).—*Add Cruwys v. Colman*, 9 Ves. 319; *Pope v. Whitcombe*, 3 Mer. 689; *Finch v. Hollingsworth*, 25 L. J. Ch. 55.
- 12, note (b); 111, note (n); 112, note (s); 113, note (g).—*Re Parish of St. Nicholas Acons* is now reported 60 L. T. N. S. 532.
- 15, note (t), 406, 407, 408.—*Buckley v. Royal National Lifeboat Institution*, which is reported 41 Ch. D. 168, has been affirmed on appeal: *Times*, 14th Nov. 1889.
- note (u).—*Re Dean, Cooper-Dean v. Stephens* is now reported 41 Ch. D. 552.
- 23, note (g).—*Add Re Fleetwood, Sidgreaves v. Brewer*, 15 Ch. D. at p. 609.
- 25, note (m), line 18.—*For 17, read 16.*
- 29, note (u).—*For 3 Atk. 356, read 1 Atk. 356.*
- 30, note (f).—*For Freem. 261, read Freem. Ch. 261.*
- 36, note (p).—*For 99, read 399.*
- 42, note (g).—*For 2 J. & W. 170, read 2 J. & W. 270.*
- 63, note (s).—*Re Fitzgerald, Adolph v. Dolman* is reported 26 W. R. 53.
- note (t); 64, note (y).—*Add Prichard v. Norris*, 4 W. R. 733; *Re Young, Young v. Dolman*, 44 L. T. N. S. 499; *Halse v. Rumford*, 47 L. J. Ch. 559.
- 66, note (n).—Charity legacies carry interest from a year after the testator's death: *Fisher v. Brierley* (No. 3), 30 Beav. 268.
- 70, note (u), last line but one.—*After "printed," insert "the former in App. I. and the latter."*
- 75, note (s).—*Add Att.-Gen. v. Lubbock*, C. P. Coop. 15; *Re St. John's College*, 2 B. & M. 603.
- 77, note (e).—*For clauses 67 and 68, read clauses 52 and 53.*
- 96, note (f).—As to the Court having no jurisdiction over the general property of ecclesiastical corporations, see also *Att.-Gen. v. Brereton*, 2 Ves. Sen. at p. 426.
- 104, note (j).—Strike out reference to *Re Douglas, Obert v. Barrow*.
- 106, note (z); 156, note (f); 161, note (z).—*Att.-Gen. v. Duke of Northumberland* was affirmed on appeal 5 Times L. R. 719.
- 125, note (t).—*For 2 S. & S., read 1 S. & S.*
- 126, note (a).—*For M'Call v. Atherton, read M'Coll v. Atherton.*
- 127, note (i); 153, note (k).—*Re Hyde's Trusts* is reported 22 W. R. 69.
- 145, note (j).—*For 3 Hare, 194, n., read 3 Hare, 195, n.*
- 147, note (t).—A legacy for a synagogue at Jerusalem, which the trustees disclaimed, was applied for a parish school at Jerusalem: *Re Davis' Trusts*, *Times*, 5th August, 1889.
- 157, note (i), 533.—*For Att.-Gen. v. Ironmongers' Co., read Ironmongers' Co. v. Att.-Gen.*
- 160, note (t).—*For Att.-Gen. v. Wrights of Glasgow, read Anderson v. Wrights of Glasgow.*
- 175, note (l).—*Add Re North Wingfield Charity*, 3 L. T. N. S. 237.

- Page 195, note (t); 210, note (n); 214, note (z); 234, note (i).—*Att.-Gen. v. Lawson*, add reference to 36 L. J. Ch. 130.
- 199, note (r).—Add *Re Grantham Charities*, 26 L. T. 302.
- 205, note (h).—Add *Re St. John's College*, 2 R. & M. 603.
- 207, note (a).—As to the powers of the University Commissioners, see *Re Pauncefort, Corporation of the Sons of the Clergy v. Christ Church, Oxford*, 61 L. T. N. S. 109.
- note (h).—For App. II., read App. I.
- note (k).—Add *Herbert v. Dean and Chapter of Westminster*, 1 P. Wms. 773.
- 221, note (s).—*Re Parish of St. Edmund* is now reported 60 L. T. N. S. 622.
- 235, note (s).—For cl. 16, read cl. 17.
- 237, note (g).—Add *Guardians of Fulham v. Guardians of Thanet*, 7 Q. B. D. 539.
- 238, note (a); 248, note (s).—*Newsome v. Flowers*, add reference to 30 Beav. 461.
- 239, note (o).—For Times, 13 Dec. 1881, read App. III. post.
- 240, note (y).—Add *Re Dixon's Trust*, 1 W. R. 244.
- 246, note (a).—*Re St. John the Evangelist* is also reported 59 L. T. N. S. 617.
- 253, 524, 528, 534, 557.—For *Royal Society of London v. Thompson*, read *Royal Society of London and Thompson*.
- 275, line 20.—The list of trustees' investments has been greatly extended by the Trust Investment Act, 1889 (52 & 53 Vict. c. 32), which repeals sect. 11 of 23 & 24 Vict. c. 38.
- 276, note (b).—The consent of the charity trustees was also required for the acceptance of an offer of exchange or payment under the National Debt Redemption Act, 1889 (52 Vict. c. 4), in the case of consolidated and reduced three per cent. stock standing in the name of the official trustees of charitable funds: 52 Vict. c. 4, s. 11.
- 278, line 5.—After "however," insert in brackets "subject to 33 & 34 Vict. c. 34, ante, p. 277."
- 288, note (g).—For 3 Mer., read 2 Mer.
- 291, note (n).—For 17 Beav. 215, read 17 Beav. 285.
- 295, last line but two.—Strike out comma after "cases."
- 297, 396.—Charity trustees may, where the trust deed is void for non-enrolment, acquire a good title under the Statutes of Limitation: *Churcher v. Martin*, 42 Ch. D. 312.
- 309, note (k).—For 4 Sim. 272, read 4 Sim. 275.
- 313, note (n).—As to the election of medical officer of an infirmary, see *Howard v. Hill*, 37 W. R. 219. There is no right to vote by proxy unless given by statute or the rules of the society, and a proxy is only valid for the particular election for which it is given: *ibid.*
- 324, note (m).—All the beneficiaries are bound by proceedings to which the Att.-Gen. was party: *Vince v. Walsh*, 3 W. R. 7.
- 326, note (e).—*Att.-Gen. v. Greenhill*, add reference to 33 Beav. 193.
- 331, note (x).—For *Re Lydford's Charity*, read *Re Lydford's Charity*.
- 341, note (g).—For an attempt made by the Ecclesiastical Commissioners to attend the settlement of a scheme, see *Att.-Gen. v. Wimborne School*, 10 Beav. 209.
- 346, note (m).—Add *Att.-Gen. v. Biddulph*, 22 L. T. 114.
- 351, note (q).—Charities having the same interest are not allowed the costs of separate appearance: *Foxen v. Foxen*, 13 W. R. 33.

- Page 355, note (b).—*For Re Thorner's Charity, read Ex parte Thorner's Charity.*
- 356, note (p).—*Add Re St. Dunstan's Charity Schools, 19 W. R. 887.*
- 367, note (m).—*For Rex v. Wilson and Rex v. Vange, read Reg. v. Wilson and Reg. v. Vange. Reg. v. Baptist Missionary Society, add reference to 10 Q. B. 884.*
- 368, note (d).—*For Rex v. Licensed Victuallers' Society, read Reg. v. Licensed Victuallers' Society.*
- 385, line 1.—*For Rex v. Allen, read Rex v. Newton.*
- 391, line 13.—*For Att.-Gen. v. Milbank, read Milbank v. Lambert.*
line 34.—*Add Howard v. Earl of Fingall, 1 W. R. 515.*
- 394, line 25.—*For purchases, read purchasers.*
- 396, line 14.—*In Howard v. Earl of Fingall, 1 W. R. 515, the conveyance to charity was set aside.*
- 409, line 43.—*Re Taylor, Martin v. Freeman, is also reported 58 L. T. N. S. 538.*
- 410, line 22.—*A legacy to "create" a charitable institution has been upheld: Re De Rosaz, Rymer v. De Rosaz, 5 Times L. R. 606.*
- 412, line 5.—*Add, after 35 Ch. D. 460, ibid. 50 L. J. Ch. 597; 51 L. J. Ch. 464.*
- 414, line 5.—*Add Re Ovey, Broadbent v. Barrow, 31 Ch. D. 113.*
- 416, line 27.—*For Precatory or Secret Trusts, read Precatory and Secret Trusts.*
- 417, line 12.—*For Brook v. Badley, read Jones v. Badley.*
last line but two.—*Churcher v. Martin is now reported 42 Ch. D. 312.*
- 418, last line but one.—*Duncan v. Lawson is now reported 60 L. T. N. S. 732.*
- 441, line 20.—*The Statute of Mortmain has not been introduced into the law of British Honduras: Jez v. McKinney, 14 App. Cas. 77.*
- 471, line 37.—*Re St. Bride's, &c. Parish Estate, add reference to 35 Ch. D. 147, n.*
- 481, line 6.—*For 7 & 8 Vict. c. 18, read 8 & 9 Vict. c. 18.*
- 497, line 2.—*The jurisdiction conferred by this section is extended by sect. 9 of the Palatine Court of Durham Act, 1889 (52 & 53 Vict. c. 47), to the Palatine Court of Durham.*
- 539, line 33.—*For 33 Beav., read 23 Beav.*
- 545, last line of note (a).—*This bill has now become law under the name of the Trust Investment Act, 1889 (52 & 53 Vict. c. 32), which repeals sect. 11 of 23 & 24 Vict. c. 38. The Act is not expressed to apply to the official trustees of charitable funds.*
- 563, line 19.—*For p. 662, read p. 675.*
- 598, 599, 601, 607, 612, 616—620.—*The case of Christ's Hospital, which was heard before the Privy Council last June and in which judgment has not yet been delivered, raises questions of great importance upon sects. 5, 8, 13, 19, 24, 25 and 26, of the End. Schools Act, 1869, and upon other provisions of the End. Schools Acts.*
- 655, note (c).—*By the Expiring Laws Continuance Act, 1889, these powers are continued to the 31st of March, 1891.*
- 699, line 29.—*Add Re St. Botolph, Bishopsgate, School, Chapel, and Curate's Residence, 3 Times L. R. 553.*
- 700, last line but three.—*By the Expiring Laws Continuance Act, 1889, these powers are continued to the 31st of March, 1891.*



THE LAW OF CHARITIES AND MORTMAIN.

PART I.

CHAPTER I.

CHARITABLE USES.

WITH regard to the meaning of "charity," Grant, M. R., said, in *Morice v. Bishop of Durham* (a), "That word in its widest sense denotes all the good affections men ought to bear towards each other; in its most restricted and common sense, relief of the poor. In neither of these senses is it employed in this Court. Here its signification is chiefly derived from the Statute of Elizabeth (b). Those purposes are charitable which the statute enumerates, or which by analogies are deemed within its spirit and intendment; and to some such purpose every bequest to charity generally shall be applied."

Meaning of charity.

The preamble to the Statute of Elizabeth contained the following enumeration of charitable objects:—

Enumeration of charitable objects in 43 Eliz. c. 4.

The relief of aged, impotent, and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities; the repair of bridges, ports, havens, causeways, churches, sea-banks, and highways; the education and preferment of orphans; relief, stock, or maintenance for houses of correction; marriages of poor maids; supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; the relief or redemption of prisoners or captives; and the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes.

There are also many objects, not expressly mentioned in the above enumeration, which the Courts nevertheless hold to be charitable, as being within the spirit and intendment of the Act.

Charitable objects within spirit of 43 Eliz. c. 4.

(a) 9 Ves. at p. 405.

(b) 43 Eliz. c. 4, now repealed, see *infra*.

Public trust and charitable trust synonymous.

43 Eliz. c. 4, repealed.

Preamble preserved.

Definition in Charitable Trusts Acts.

Decisions as to what are charitable objects.

Aged, impotent, and poor persons.

The result of the decisions is, as will be seen (c), that every public trust is a charitable trust. And the expressions public trust and charitable trust are synonymous (d).

The Statute of Elizabeth, which, except so far as it has furnished the definition of charity, has long been obsolete, has now been repealed by the Mortmain and Charitable Uses Act, 1888 (e).

Sect. 13, sub-s. (2), of the new enactment, however, incorporates the preamble to 43 Eliz. c. 4, and, after reciting that in divers enactments and documents reference is made to charities within the meaning, purview, and interpretation of that Act, provides that references to such charities shall be construed as references to charities within the meaning, purview, and interpretation of the said preamble.

In the Charitable Trusts Acts (f) "charity" is defined to mean every endowed foundation and institution taking or to take effect in England or Wales, and coming within the meaning, purview, and interpretation of the Statute 43 Eliz. c. 4, or as to which, or the administration of the revenues or property of which, the Court of Chancery formerly had or might exercise jurisdiction.

It is proposed in the present Chapter to state what have been held to be charitable objects, whether within the express words or within the spirit of the Statute of Elizabeth.

Relief of Poverty and Distress.

The relief of aged, impotent, and poor people is among the objects expressly enumerated in the preamble to the Statute of Elizabeth. Gifts to or for the benefit of the poor indefinitely (g), or the poor of a particular parish or place (h), are accordingly charitable.

So also are gifts for the inmates of a workhouse (i), or the persons maintained in a hospital (j), or emigrating to particular colonies (k).

Similarly, gifts to poor pious persons (l), to "poor pious persons

(c) *Post*, pp. 11 *et seq.*

(d) In *Jones v. Williams*, Amb. 651, charity is defined to be a general public use: *Att.-Gen. v. Aspinall*, 2 My. & C. at p. 623; *Goodman v. Mayor of Saltash*, 7 App. Cas. at p. 650; *Re Christchurch Inclosure Act*, 38 Ch. D. at p. 532.

(e) 51 & 52 Vict. c. 42, s. 13, *post*, Part II. of this Book.

(f) *Charit. Trusts Act*, 1853, s. 66; *Charit. Trusts Amend. Act*, 1856, s. 48, *post*.

(g) *Att.-Gen. v. Peacock*, Rep. t. Finch, 245; *Att.-Gen. v. Matthews*, 2 Lev. 167; *Att.-Gen. v. Rance*, cited Amb. 422; *Nash v. Morley*, 5 Beav. 177. As to who are entitled to the benefit of such a gift, see *post*, pp. 104 *et seq.*

(h) *Woodford v. Parkhurst*, Duke, 70; *Att.-Gen. v. Clarke*, Amb. 422; *Att.-Gen. v. Bovill*, 1 Ph. 762; *Att.-Gen. v. Wilkinson*, 1 Beav. 370; *Bristow v. Bristow*, 5 Beav. 289; *Salter v. Feary*, 7 Jur. 831; *Re Lambeth Charities*, 22 L. J. Ch. 959; *Att.-Gen. v. Blizard*, 21 Beav. 233; *Thompson v. Corby*, 27 Beav. 649; *Russell v. Kellett*, 3 Sm. & G. 264; *Re St. Alphage, London Wall, Parish Estates*, 59 L. T. N. S. 614.

(i) *Att.-Gen. v. Vint*, 3 De G. & Sm. 704.

(j) *Corporation of Reading v. Lane*, Duke, 81, 111.

(k) *Barclay v. Maskelyne*, 4 Jur. N. S. 1294.

(l) *Nash v. Morley*, 5 Beav. 177.

of the Methodist Society" in a particular place (*m*), and to charitable and deserving objects (*n*), have been held to be charitable.

The same is the case with gifts for distributing clothes or bread to the poor, or for putting out their children as apprentices (*o*).

Gifts for widows and orphans, as to the widows and children of seamen at a particular port (*p*), to the widows and orphans of a parish (*q*), to "twenty aged widows and spinsters" (*r*), are also charitable.

Widows and orphans, &c.

Gifts for the benefit of the poorer classes are deemed to be within the spirit of the statute.

Gifts for benefit of poorer classes.

Thus, bequests for letting land to the poor at a low rent (*s*), for the increase and encouragement of good servants (*t*), for deserving literary men who have not been successful (*u*), for the benefit of the poor members of a particular trade (*x*), for poor housekeepers (*y*), for old decayed tradesmen (*z*), and reduced gentlewomen (*a*), are charitable.

But a gift for building labourers' cottages on a particular estate was held not charitable (*b*); so, also, a gift to the children of the tenantry of the donor, there being nothing to show that it was intended for the benefit of poor persons (*c*).

Gifts held not charitable.

Gifts to institutions established for the benefit of persons belonging to the classes above mentioned (*d*), as hospitals, infirmaries, dispensaries and almshouses (*e*), orphan and other asylums (*f*), orphanages

Institutions for relief of poverty or distress.

(*m*) *Dawson v. Small*, L. R. 18 Eq. 114.

(*n*) *Re Sutton, Stone v. Att.-Gen.*, 28 Ch. D. 464; and see *post*, p. 29.

(*o*) *Att.-Gen. v. Minshull*, 4 Ves. 11; *Att.-Gen. v. Earl of Winchelsea*, 3 Bro. C. C. 373; *Thompson v. Thompson*, 1 Coll. at p. 392.

(*p*) *Powell v. Att.-Gen.*, 3 Mer. 48.

(*q*) *Att.-Gen. v. Comber*, 2 S. & S. 93; *Russell v. Kellatt*, 3 Sm. & G. 264.

(*r*) *Thompson v. Corby*, 27 Beav. 649.

(*s*) *Crafton v. Frith*, 20 L. J. Ch. 198. See also *Att.-Gen. v. Blizard*, 21 Beav. 233.

(*t*) *Loscombe v. Wintringham*, 13 Beav. 87; *Rees v. Att.-Gen.*, 3 Hare, 191.

(*u*) *Thompson v. Thompson*, 1 Coll. 395. With regard to gifts to a limited class of persons, see *Att.-Gen. v. Laues*, 8 Hare, at p. 41, where Shadwell, V.-C., said that a bequest was not the less charitable because it was for the benefit of a limited class of persons; that it was not the number of the objects which made the difference between a public and private charity; that it was not the less a charity because it was confined to those members of a particular class of persons who were subject to certain grievances, and not to the class at large.

(*x*) *Re White's Trusts*, 33 Ch. D. 449.

(*y*) *Att.-Gen. v. Pearce*, 2 Atk. 87.

(*z*) *Att.-Gen. v. Painters' Co.*, 2 Cox, 52; *Att.-Gen. v. Ironmongers' Co.*, 2 My. & K. 576. So also a legacy for releasing debtors was charitable: *Att.-Gen. v. Painters' Co.*, *supra*; and see *Mayor of Lyons v. Advocate-Gen. of Bengal*, 1 App. Cas. 91. But bequests for persons imprisoned for crimes are void, as being contrary to the policy of the law: *Thrupp v. Collett*, 26 Beav. 125, *post*, p. 17.

(*a*) *Att.-Gen. v. Power*, 1 Ball & B. 145.

(*b*) *Re Tunno, Raikes v. Raikes*, W. N. 1886, 154.

(*c*) *Browne v. King*, 17 L. R. Ir. 448.

Where the charitable purpose is sufficiently general, poverty in the recipients is not a necessary element, see *post*, p. 11.

(*d*) *Baker v. Sutton*, 1 Keen, 224; *Wilkinson v. Lindgren*, L. R. 5 Ch. 570.

(*e*) *Mayor of London's Case*, Duke, 83, 111; *Att.-Gen. v. Kell*, 2 Beav. 575; *Harbin v. Masterman*, L. R. 12 Eq. 559; *Re Alchin's Trusts*, L. R. 14 Eq. 230; *Thomas v. Howell*, L. R. 18 Eq. 198; *Re Ovey, Broadbent v. Barrow*, 29 Ch. D. 560; *Biscoe v. Jackson*, 35 Ch. D. 460.

(*f*) *Clark v. Taylor*, 1 Dr. 642; *Harbin v. Masterman*, L. R. 12 Eq. 559.

for children of persons of a particular class, as railway servants (*g*), policemen (*h*), or clergy (*i*), homes of various kinds (*k*), and charity organization societies (*l*), or to officials of such institutions for the benefit of the institutions (*m*), as the master and governors or treasurer of a hospital (*n*), orphan asylum, or other charitable institution (*o*), are charitable. So, also, is a gift for endowing or erecting a hospital (*p*), establishing an asylum (*q*), or a soup kitchen or cottage hospital (so long as it does not infringe the mortmain provisions) (*r*).

Friendly societies.

Friendly societies, at least where poverty is an ingredient in the qualification required for receipt of the benefits of them, are charitable institutions (*s*).

Poor relations.

Gifts to "poor relations" (*t*), poor kinsmen and kinswomen (*u*), the lineal descendants of the testator's uncle "as they may severally stand in need" (*x*), or relations "if they shall come to want" (*y*), have been held to be charitable.

Immediate gift.

A gift to poor relations is not, however, necessarily charitable, as where there is an intention to give an immediate legacy to particular relations, even though the individuals to take may be left to the selection of the executors.

Confined to relations within Statute of Distributions.

In such a case only relations coming within the Statute of Distributions will take, and the legacy is not charitable (*z*).

In *Mahon v. Savage* (*a*) a bequest to "poor relations, and such

(*g*) *Hall v. Derby Sanitary Authority*, 16 Q. B. D. 163.

(*h*) *Re Douglas, Obert v. Barrow*, 35 Ch. D. 472.

(*i*) *Re Clergy Society*, 2 K. & J. 615.

(*k*) *Rolls v. Miller*, 27 Ch. D. 71; *German v. Chapman*, 7 Ch. D. 271. See further, *post*, pp. 15, 16.

(*l*) *Re Ovey, Broadbent v. Barrow*, 29 Ch. D. 560.

(*m*) See per Lord St. Leonards in *Incorporated Society v. Richards*, 1 Dr. & War. at p. 294; per Lord Hatherley in *Att.-Gen. v. Sidney Sussex College*, L. R. 4 Ch. at p. 730; as to a gift to a charitable corporation for its general purposes, *Re Douglas, Obert v. Barrow*, 35 Ch. D. 472.

(*n*) *Mayor of London's Case*, Duke, 83, 111; *Thomas v. Howell*, L. R. 18 Eq. 198.

(*o*) *Beaumont v. Oliveira*, L. R. 4 Ch. 309.

(*p*) *Pelham v. Anderson*, 2 Eden, 296; *Att.-Gen. v. Kell*, 2 Beav. 575; *Att.-Gen. v. Gascoigne*, 2 My. & K. 647.

(*q*) *Henshaw v. Atkinson*, 3 Madd. 306.

(*r*) *Biscoe v. Jackson*, 35 Ch. D. 460. See *post*, Part II. of this Book, as to how far such gifts were formerly affected by 9 Geo. II. c. 36, and are now affected

by Part II. of the Mortmain and Charit. Uses Act, 1888.

(*s*) *Spiller v. Maude*, 32 Ch. D. 158, n.; *Pease v. Pattinson*, 32 Ch. D. 154; *contra*, *Re Clark's Trusts*, 1 Ch. D. 497. See *Anon.*, 3 Atk. 277.

(*t*) *White v. White*, 7 Ves. 422; *Isaac v. De Friez*, 17 Ves. 373, n.; *Att.-Gen. v. Duke of Northumberland*, 7 Ch. D. 745.

(*u*) *Att.-Gen. v. Price*, 17 Ves. 371. See also *Goff v. Webb*, Toth. 92; *Gower v. Mainwaring*, 2 Ves. Sen. 87; *Goodings v. Goodings*, 1 Ves. Sen. 231; *Edge v. Salisbury*, Amb. 70.

(*x*) *Gillam v. Taylor*, L. R. 16 Eq. 581; but see *Liley v. Hey*, 1 Hare, 580; cf. *Att.-Gen. v. Sidney Sussex College*, L. R. 4 Ch. 722.

(*y*) *Bernal v. Bernal*, 3 My. & C. 559; *Browne v. Whalley*, W. N. 1866, 386. See also *Att.-Gen. v. Sidney Sussex College*, 34 Beav. 654; *ibid.* L. R. 4 Ch. 722.

(*z*) *Green v. Howard*, 1 Bro. C. C. 31; *Edge v. Salisbury*, Amb. 70; *Brunsdon v. Woolredge*, Amb. 507; *Widmore v. Woodroffe*, Amb. 636; *Goodings v. Goodings*, 1 Ves. Sen. 231; *Gower v. Mainwaring*, 2 Ves. Sen. 87, 110. See also *Gillam v. Taylor*, L. R. 16 Eq. 581.

(*a*) 1 Sch. & L. 111.

other objects of charity" as the testator should mention, was held to be charitable.

Where, however, there is a perpetual trust in favour of poor relations it is charitable, and the persons to take cannot be confined to those coming within the Statute of Distributions (*b*). Perpetual trust.

Where the gift is for the "poorest" of the testator's relations or "Poorest" kindred, it can only be charitable if upon the construction of the will it appears to be intended only for persons actually poor; that is to say, "poorest" must be construed to mean "very poor." If it were not intended only for persons actually poor, but might include the least wealthy of a wealthy class, it would not be charitable (*c*). For if wealthy persons are to take the benefit of a gift of this kind it is not charitable.

Advancement of Learning.

Gifts for schools of learning (*d*) are within the express language of the Statute of Elizabeth, and gifts for the advancement of learning generally are charitable within its intendment. Advancement of learning.

Thus, gifts for the benefit and advancement and propagation of learning in every part of the world (*e*), for the increase of knowledge (*f*), or to build or erect a school or free grammar school (*g*), or a school for boys, with preference to the lineal descendants of the testator's grandfather (*h*), even a school for the sons of gentlemen (*i*), or to support a school (*k*), or to maintain a schoolmaster (*l*); have been held charitable.

So also a bequest to the masters and fellows of a college (*m*), a bequest for the foundation of a scholarship (*n*), fellowship (*o*), or lectureship (*p*), for founding prizes for essays (*q*), or for the Scholarships, prizes, &c.

(*b*) *White v. White*, 7 Ves. 423; *Isaac v. De Friez*, 17 Ves. 373, n.; *Att.-Gen. v. Price*, *ibid.* 373. See *Peek v. Peek*, 17 W. R. 1059.

(*c*) *Att.-Gen. v. Duke of Northumberland*, 7 Ch. D. 745, overruling the dictum of Wickens, V.-C., in *Gillam v. Taylor*, L. R. 16 Eq. 581; and see also *Isaac v. De Friez*, Amb. 595; *Att.-Gen. v. Price*, 17 Ves. 371.

(*d*) *Att.-Gen. v. Nash*, 3 Bro. C. C. 587; *Kirkbank v. Hudson*, 7 Price, 212.

(*e*) *Whicker v. Hume*, 7 H. L. C. 124. See also *Incorporated Society v. Richards*, 1 Dr. & W. 258.

(*f*) *President of United States v. Drummond*, cited 7 H. L. C. at p. 155.

(*g*) *Case of Rugby School*, Duke, 80; *Gibbons v. Maltby*, Poph. 6. But as to how far such gifts are within the mortmain provisions, see note (*q*) to sect. 4 of the Mortmain and Charit. Uses Act,

1888, *post*.

(*h*) *Braund v. Earl of Devon*, L. R. 3 Ch. 800.

(*i*) *Att.-Gen. v. Earl of Lonsdale*, 1 Sim. 105.

(*k*) *Re Sir Robert Peel's School at Tamworth*, L. R. 3 Ch. 543; and see *Hartshorne v. Nicholson*, 26 Beav. 58.

(*l*) *Hynshaw v. Corporation of Morpeth*, Duke, 69.

(*m*) *Plate v. St. John's College*, Duke, 77, 111.

(*n*) *Rex v. Newman*, 1 Lev. 284; *Re Marmaduke Levitt*, 1 Times L. R. 578.

(*o*) *Case of Jesus College*, Duke, 78, 111.

(*p*) *Att.-Gen. v. Margaret and Regius Professors at Cambridge*, 1 Vern. 55; *Yates v. University College*, L. R. 7 H. L. 438.

(*q*) *Thompson v. Thompson*, 1 Coll. at p. 398; *Farrer v. St. Catherine's Col-*

education of relations of descendants and kindred of the testator in a college at one of the universities (*r*), have been held to be charitable within the intent of the statute (*s*).

A gift to Trinity College, Dublin, for the promotion of knowledge of the Irish language was charitable (*t*).

Advancement of Religion.

Religious purposes.
Repair or ornament of church.

Gifts for the advancement of religion are by analogy held to be within the Statute of Elizabeth. Thus, bequests for the good (*u*), for the reparation, furniture, or ornaments (*x*) of a parish church, or for building and endowing a church (*y*), or for keeping in repair a chancel (*z*), or a window or monument in a church (*a*), or any part of the fabric of a church, are charitable.

Upon the same principle, a bequest for providing a new church clock (*b*), or keeping the chimes of a church in repair (*c*), or for keeping up an organ and furnishing a stipend to the organist (*d*), or for the repair of a parsonage house (*e*), are charitable.

Private chapel.

But a bequest for the maintenance and repair of a private chapel is not charitable (*f*).

Repair of churchyard.

A bequest of money not exceeding 500*l.*, upon trust to apply the income in repairing a churchyard, was held to be charitable, as being for the benefit of the inhabitants at large, and to come within the Church Building Act (*g*).

lege, L. R. 16 Eq. 19, where the bequest was to found a prize for an essay on primogeniture.

(*r*) *Att.-Gen. v. Sidney Sussex College*, 34 Beav. 654; *ibid.*, L. R. 4 Ch. 722. As to who come within the meaning of a gift to a college for the education of the donor's kindred, see *Spencer v. All Souls' College*, Wilm. at p. 166, where it was said that the words "*de consanguinitate genere et sanguine*" were as general, comprehensive, and indefinite as could be found in the Latin language, and took in all persons whatsoever who were of the same blood with the founder to the remotest generation.

(*s*) *Case of Christ's College, Cambridge*, 1 W. Bl. 90; *Att.-Gen. v. Combe*, 2 Ch. Ca. 18; *Porter's Case*, 1 Rep. 25 b; *Att.-Gen. v. Whorwood*, 1 Ves. Sen. 534; *Braund v. Earl of Devon*, L. R. 3 Ch. 800.

(*t*) *Att.-Gen. v. Flood, Hayes & J.*, App. xxi. Cf. *Brownjohn v. Gale*, W. N. 1869, 133.

(*u*) *Wingfield's Case*, Duke, 80.

(*x*) *Att.-Gen. v. Ruper*, 2 P. Wms. 126; *Att.-Gen. v. Vivian*, 1 Russ. 226; *Re Estate of Church of Donington-on-*

Baine, 6 Jur. N. S. 290; *Att.-Gen. v. Love*, 23 Beav. 499; *Re Church Estate Charity*, L. R. 6 Ch. 296; *Re Palatine Estate Charity*, 39 Ch. D. 64; *Att.-Gen. v. Corporation of Dartmouth*, 48 L. T. N. S. 933.

(*y*) *Re Parker*, 4 H. & N. 666.

(*z*) *Hoare v. Osborne*, L. R. 1 Eq. 585.

(*a*) *Ibid.*; *Re Rigley's Trusts*, 36 L. J. Ch. 147.

(*b*) *Re Hendry, Watson v. Blakeney*, 56 L. T. N. S. 908; *Re Church Estate Charity*, L. R. 6 Ch. 296.

(*c*) *Turner v. Ogden*, 1 Cox, 316.

(*d*) *Att.-Gen. v. Oakover*, cited 1 Ves. Sen. 535. Lord Hardwicke, however, held in that case that an annuity to choristers of a parish church was not charitable. See also *Durour v. Motteux*, 1 Ves. Sen. 320; *Re Palatine Estate Charity*, 39 Ch. D. 64.

(*e*) *Att.-Gen. v. Bishop of Chester*, 1 Bro. C. C. 444.

(*f*) *Hoare v. Hoare*, 56 L. T. N. S., 147.

(*g*) 43 Geo. III. c. 108. See note to sect. 8 of the Mortmain and Charit. Uses Act, 1888, *post*; *Re Vaughan, Vaughan v. Thomas*, 33 Ch. D. 187.

But a bequest for building, maintaining, or keeping in repair the vaults or tombs of the testator or his family, not being within a church, is not for the benefit of the inhabitants of the parish generally, and is therefore not charitable (*h*).

Building and repair of tombs.

And a trust for that purpose extending beyond the limit allowed by the rule against perpetuities is void (*i*).

But there is nothing to render such a bequest invalid if a perpetual trust is not created (*k*).

A bequest of this kind, not being charitable, is not within the Church Building Act (*l*).

Bequests to a minister for preaching (*m*), or to the minister for the time being (*n*), for a priest and his successors as an addition to the stipend (*o*), for a pension for a perpetual curate (*p*), for unbeneficed curates (*q*), for the incumbent of a church so long as he shall permit the sittings to be occupied free (*r*), or to a minister and his successors so long as he shall teach a particular doctrine (*s*), or for preaching an anniversary sermon (*t*), or to establish a bishopric (*u*), are charitable. So, also, augmentations by ecclesiastical persons to small vicarages and curacies (*v*), and bequests to Queen Anne's Bounty (*x*).

Providing clergymen and augmenting benefices.

(A) *Masters v. Masters*, 1 P. Wms. 422, 423, n. 1; *Gravenor v. Hallum*, Amb. 643; *Durour v. Motteux*, 1 Ves. Sen. 320; *Doe v. Pitcher*, 3 M. & S. 407; and see *Mitford v. Reynolds*, 1 Ph. 185, 198; *Mellick v. President, &c. of the Asylum*, Jac. 180; *Adnam v. Cole*, 6 Beav. 353; *Lloyd v. Lloyd*, 2 Sim. N. S. 255; *Willis v. Brown*, 2 Jur. 987; *Rickard v. Robson*, 31 Beav. 244; *Fowler v. Fowler*, 33 Beav. 616; *Hoare v. Osborne*, L. R. 1 Eq. 585; *Re Rigley's Trusts*, 36 L. J. Ch. 147; *Fisk v. Att.-Gen.*, L. R. 4 Eq. 521; *Hunter v. Bullock*, L. R. 14 Eq. 45; *Dawson v. Small*, L. R. 18 Eq. 114; *Re Williams*, 5 Ch. D. 735; *Re Birkett*, 9 Ch. D. 576; *Yee Cheah Neo v. Ong Cheng Neo*, L. R. 6 P. C. 381.

(i) See *post*, p. 57.

(k) *Lloyd v. Lloyd*, 2 Sim. N. S. 255; *Willis v. Brown*, 2 Jur. 987; *Mitford v. Reynolds*, 1 Ph. 185; *Mellick v. President, &c. of the Asylum*, Jac. 180; *Adnam v. Cole*, 6 Beav. 353; *Trimmer v. Danby*, 25 L. J. Ch. 424; *Mussett v. Bingle*, W. N. 1876, 170.

(l) 43 Geo. III. c. 108. See notes to sect. 8 of the Mortmain and Charit. Uses Act, 1888, *post*; *Re Rigley's Trusts*, 36 L. J. Ch. 147; *Re Vaughan*, Vaughan v. Thomas, 33 Ch. D. 187.

(m) *Gibbons v. Maltyard*, Poph. 6;

Pember v. Inhabitants of Knighton, Duke, 82; *Penstred v. Payer*, *ibid.*; *Re Hussey's Charities*, 7 Jur. N. S. 325. See, also, the observations of Sir T. Moore, Duke, 131, 132, and *Durour v. Motteux*, 1 Ves. Sen. 320.

(n) *Att.-Gen. v. Sparkes*, Amb. 201.

(o) *Thorner v. Wilson*, 3 Drew. 245; *Robb v. Dorrian*, Ir. R. 11 C. L. 292; *Gibson v. Representative Church Body*, 9 L. R. Ir. 1; and see *Att.-Gen. v. Cock*, 2 Ves. Sen. 273.

(p) *Att.-Gen. v. Parker*, 1 Ves. Sen. 43. The question whether there is a perpetual curacy or not depends on three questions—(1) whether there are parochial rights in it; (2) what rights the inhabitants have in respect of it; and (3) what are the rights and dues of the curate: *Att.-Gen. v. Brereton*, 2 Ves. Sen. at pp. 426, 427.

(q) *Pennington v. Buckley*, 6 Hare, 453.

(r) *Re Randell*, *Randell v. Dixon*, 38 Ch. D. 213.

(s) *Att.-Gen. v. Molland*, 1 You. 562. See *Milbank v. Lambert*, 28 Beav. 206.

(t) *Re Parker's Charity*, 32 Beav. 654.

(u) *Att.-Gen. v. Bishop of Chester*, 1 Bro. C. C. 444.

(v) *Att.-Gen. v. Brereton*, 2 Ves. Sen. 426; *Milbank v. Lambert*, 28 Beav. 206.

(x) *Widmore v. Woodroffe*, Amb. 636; *Middleton v. Clitherow*, 3 Ves. Jun. 734.

Gifts to individual preachers.

Where, however, the bequest is not intended to be for the benefit of the person for the time being holding the office of minister, but is merely a gift to the particular individual then occupying the office, it is not charitable (*y*). A gift to the chaplain of a private chapel is not charitable (*z*).

Individuals to be selected by third person.

This may be the case, even though the particular individuals to take are not specified, but are left to be selected by another person, and notwithstanding that the motive of the gift may be the relief of poverty.

Thus, a bequest to sixty pious ejected ministers to be named by another person, was held to be a legacy to particular individuals, and not charitable (*a*).

Similarly, in *Thomas v. Howell* (*b*), a legacy to each of ten poor clergymen of the Church of England, to be selected by a specified person, was held not to be charitable.

Validity of gift may depend on whether it is to individual or not.

Where the gift is of land or other property which, under the mortmain provisions (*c*), cannot be given to charity, the validity of the gift will depend on the question whether it is a gift to the particular individual or whether it is annexed to the office. In the former case it will be good (*d*), in the latter bad (*e*).

Religious institutions.

Gifts to institutions having for their object purposes connected with the advancement of religion, as the Church Building Society, the Society for Promoting Christian Knowledge, the Church Missionary Society (*f*), the Additional Curates' Aid Society, the Society for the Propagation of the Gospel in Foreign Parts, the Church Pastoral Aid Society (*g*), are charitable.

Similarly, gifts to "charitable institutions and purposes within the kingdom of England" (*h*), to certain religious charitable institutions by name, and "any other religious institutions or purposes" as the trustees might think proper (*i*), or for distribution,

(*y*) *Doe v. Aldridge*, 4 T. R. 265. See *Donnellan v. O'Neill*, Ir. R. 5 Eq. 523; *Thorner v. Wilson*, 3 Drew. 245; *Farrer v. St. Catherine's College, Cambridge*, L. R. 16 Eq. 19.

(*z*) *Hoare v. Hoare*, 56 L. T. N. S. 147.

(*a*) *Att.-Gen. v. Hughes*, 2 Vern. 105, reversing *S. C.*, nom. *Att.-Gen. v. Baxter*, 1 Vern. 248. See *Moggridge v. Thackwell*, 7 Ves. at p. 76, where this case is explained.

(*b*) L. R. 18 Eq. 198; cf. *Liley v. Hay*, 1 Hare, 580; *Att.-Gen. v. Gley*, Amb. 584. Legacies payable once for all are, however, often charitable, as in the case of gifts for poor persons. See *Att.-Gen. v. Comber*, 2 S. & S. 93; *Russell v.*

Kellett, 3 Sm. & G. 264, and other cases cited *ante*, p. 3.

(*c*) Mortmain and Charit. Uses Act, 1888, s. 4, and notes, *post*.

(*d*) *Doe v. Aldridge*, 4 T. R. 265; and see *Donnellan v. O'Neill*, Ir. R. 5 Eq. 523.

(*e*) *Thorner v. Wilson*, 3 Drew. 245. See also *Att.-Gen. v. Cock*, 2 Ves. Sen. 273.

(*f*) *Re Clergy Society*, 2 K. & J. 615.

(*g*) *Re Maguire*, L. R. 9 Eq. 632.

(*h*) *Baker v. Sutton*, 1 Keen, 224.

(*i*) *Wilkinson v. Lindgren*, L. R. 5 Ch. 570; see *Townsend v. Carus*, 3 Hare, 257; and cf. *Dolan v. Macdermot*, L. R. 3 Ch. 676, *post*, p. 11.

as by a community of nuns, among the poor or suffering classes, have been held good as charities (*k*).

So, also, a bequest to a voluntary association, as an association of nuns, sisters of mercy, missionaries, &c., united for the purpose of performing charitable functions, as teaching the poor and nursing the sick, is charitable (*l*).

Gifts for religious purposes are, however, only charitable where they extend, directly or indirectly, to the instruction or benefit of the public.

Thus, a bequest intended for the benefit of the individual members of a religious community is not charitable (*m*).

So, also, bequests for prayers or masses for the soul of the testator (*n*), or for performing religious ceremonies (*o*) for the testator, &c., are not charitable, for such gifts are only for the benefit or solace of the testator or his family.

Again, a gift for the benefit of a religious community, the members of which are associated for the sole purpose of working out their own salvation, would not be charitable (*p*).

In *Cocks v. Manners* (*q*), a residue consisting of pure and impure personalty was left between two religious institutions. One of them was a Dominican convent where Roman Catholic women lived together by mutual agreement for the purpose of sanctifying their own souls. The other was a community of Sisters of Charity of St. Paul, also a voluntary association, whose primary object was personal sanctification, but who, as a means thereto, employed themselves in works of charity, such as teaching the poor and nursing the sick. The testator directed the payments to be made to the superior for the time being of each institution. Wickens, V.-C., held, first, that the community of the Sisters of St. Paul was a charitable institution, and that the bequest to them was good as to the pure personalty only: secondly, that the bequest to the Dominican convent was not charitable, and that, as it was not void on the ground of perpetuity, it was good both as to pure and impure personalty.

(*k*) See *Dillon v. Reilly*, Ir. R. 10 Eq. 152; *Carbery v. Cox*, 3 Ir. Ch. R. 231; *Nash v. Morley*, 5 Beav. 177; *Townsend v. Carus*, 3 Hare, 267; *Walsh v. Gladstone*, 1 Ph. 290.

(*l*) *Cocks v. Manners*, L. R. 12 Eq. at p. 684; *Mahony v. Duggan*, 11 L. R. Ir. 260.

(*m*) *Stewart v. Green*, Ir. R. 5 Eq. 470; *Re Delany's Estate*, 9 L. R. Ir. 226; *Morrow v. M'Conville*, 11 L. R. Ir. 236; *Re Wilkinson's Trusts*, 19 L. R. Ir. 531; *Bradshaw v. Jackman*, 21 L. R. Ir. 12. See also *Hogan v. Byrne*, 13 Ir. C.

L. R. 166, where the gift was void for uncertainty.

(*n*) *West v. Shuttleworth*, 2 My. & K. 684; *Heath v. Chapman*, 2 Drew. 417; *Re Blundell's Trusts*, 30 Beav. 360; see *post*, p. 23. Such gifts are also superstitious: *ibid*.

(*o*) *Yeap Cheah Neo v. Ong Cheng Neo*, L. R. 6 P. C. at p. 396.

(*p*) *Cocks v. Manners*, L. R. 12 Eq. 574. See *Stewart v. Green*, *supra*; *Morrow v. M'Conville*, *supra*; and *Re Wilkinson's Trusts*, *supra*.

(*q*) *Supra*.

Religious community.

Gifts for religious purposes not charitable where public not benefited

Bequest for individual members of community.

Prayers for testator's soul.

Community established only for benefit of its members.

Cocks v. Manners.

Society for suppression of cruelty to animals by prayer.

In a recent case, an opinion was expressed that a gift to a society, the object of which was the suppression of cruelty to animals by means of private prayer on the part of the individual members, would not be charitable (*r*).

General religious purposes.

Bequests for general religious purposes, as the advancement of Christianity among infidels (*s*), for the distribution of bibles and other religious books (*t*), to be employed "in the service of my Lord and Master" (*u*), for maintaining the worship of God (*x*), or for the spread of the Gospel (*y*), are good charitable gifts.

A bequest to trustees "upon trust to pay, divide, or dispose thereof unto or for the benefit or advancement of such societies, subscriptions, or purposes, having regard to the glory of God in the spiritual welfare of his creatures, as they shall in their discretion see fit," was held to be a gift for religious purposes and was so restricted (*z*).

Dissenters, Roman Catholics, Jews, &c.

It makes no difference that the gift is for the advancement of religious doctrines differing from those of the Established Church, so long as they are not subversive of all religion and morality (*a*).

Thus, trusts for maintaining dissenting (*b*), or Roman Catholic (*c*) chapels are charitable. So, also, a gift to promote the Roman Catholic religion (*d*), "for the use of Roman Catholic priests in and near London" (*e*), or as an addition to the stipend of the priest of a Roman Catholic chapel (*f*). But a bequest to Roman Catholic bishops and their successors, there being no such persons known to the law, was held void (*g*).

The same is the case with gifts for the benefit of Unitarians (*h*), Jews (*i*), Baptists (*k*), Presbyterians (*l*), Irvingites (*m*), Methodists (*n*), and other dissenting bodies (*o*).

(*r*) *Re Joy, Purday v. Johnson*, 60 L. T. N. S. 175.

(*s*) *Att.-Gen. v. City of London*, 1 Ves. Jun. 243.

(*t*) *Att.-Gen. v. Stepney*, 10 Ves. 22; *Thornton v. Howe*, 81 Beav. 14.

(*u*) *Powerscourt v. Powerscourt*, 1 Moll. 616; and see *Felan v. Russell*, 4 Ir. Eq. R. 701.

(*x*) *Att.-Gen. v. Pearson*, 3 Mer. 353, 409.

(*y*) *Re Lea, Lea v. Cooke*, 34 Ch. D. 528.

(*z*) *Townsend v. Carus*, 3 Hare, 257.

(*a*) Per Romilly, M. R., in *Thornton v. Howe*, 31 Beav. at pp. 19, 20.

(*b*) *Att.-Gen. v. Pearson*, 3 Mer. 353; *Att.-Gen. v. Fowler*, 15 Ves. at p. 88; *Att.-Gen. v. Wansay*, *ibid.* 231, and other cases cited *post*, p. 21. And see *Bunting v. Sargent*, 13 Ch. D. 330.

(*c*) *De Windt v. De Windt*, 23 L. J. Ch. 776.

(*d*) *West v. Shuttleworth*, 2 My. & K. 684.

(*e*) *Att.-Gen. v. Gladstone*, 13 Sim. 7.

(*f*) *Thornder v. Wilson*, 3 Drew. 245; and see *Att.-Gen. v. Cock*, 2 Ves. Sen. 273.

(*g*) *Att.-Gen. v. Power*, 1 Ball & B. 145.

(*h*) *Re Barnett*, 29 L. J. Ch. 871; *Shrewsbury v. Hornby*, 5 Hare, 406; *Shore v. Wilson*, 9 Cl. & F. 355.

(*i*) *Da Costa v. De Paz*, 2 Swanst. 487, n.; *Straus v. Goldsmid*, 8 Sim. 614.

(*k*) *Att.-Gen. v. Cock*, 2 Ves. Sen. 273.

(*l*) *Lloyd v. Spillet*, 2 Atk. 148.

(*m*) *Att.-Gen. v. Lawes*, 8 Hare, 32.

(*n*) *Dawson v. Small*, L. R. 18 Eq. 114.

(*o*) *Att.-Gen. v. Hickman*, 2 Eq. Ca. Ab. 193, pl. 14; *Waller v. Childs*, Amb. 524.

A bequest for distributing the works of Joanna Southcote was held charitable (*p*). But a legacy for the best essay on the sufficiency of Natural Theology treated as a science, was held void as subversive of Christianity (*q*).

General Public Purposes.

Gifts for public and general purposes, although beneficial to the rich as well as the poor, are held to be charitable within the intent of the Statute of Elizabeth. It is not material that the particular public or general purpose is not expressed in the statute, all other legal public or general purposes being within its purview (*r*).

Gifts for public and general purposes.

So a bequest "for the discharge of the tax of the Commonalty of G., to King Henry VII., and his successors, henceforth to be granted," was charitable (*s*).

Discharging taxes.

A bequest "to the Queen's Chancellor of the Exchequer for the time being, and to be by him appropriated to the benefit and advantage of my beloved country Great Britain," was held a good charitable bequest (*t*).

General benefit of kingdom.

And the same would be the case with a gift towards payment of the national debt (*u*).

National debt.

In *Mitford v. Reynolds* (*x*), a gift by a testator of the remainder of his property to the Government of Bengal, to be applied "to charitable, beneficial, and public works, at and in the city of Dacca in Bengal," for the exclusive benefit of the native inhabitants in such manner as they and the government might regard as most conducive to that end, was held to be a good charitable bequest.

Gift for benefit of city in India.

Gifts for the benefit of a parish generally, or the inhabitants of a particular place (*y*), for such charities and other public purposes as lawfully might be in a particular parish (*z*), or for the use or benefit of a borough town, or the inhabitants thereof, or of the

Gift for benefit of parish or town.

(*p*) *Thornton v. Howe*, 31 Beav. 14. See also *Pare v. Clegg*, 29 Beav. 589, and *Russell v. Jackson*, 10 Hare, at p. 215, with regard to the socialistic doctrines of Robert Owen.

(*q*) *Briggs v. Hartley*, 19 L. J. Ch. 416. See, however, *Farrer v. St. Catharine's College, Cambridge*, L. R. 16 Eq. 19, and *Thompson v. Thompson*, 1 Coll. at p. 397.

(*r*) *Att.-Gen. v. Heelis*, 2 S. & S. at p. 76. See also *post*, p. 366, n. (*c*).

(*s*) *Att.-Gen. v. Bushby*, 24 Beav. 299.

(*t*) *Nightingale v. Goulbourn*, 2 Ph. 594.

(*u*) See *Thellusson v. Woodford*, 4 Ves. 235, 298, 310; *Newland v. Att.-Gen.*,

3 Mer. 684; *Trustees of British Museum v. White*, 2 S. & S. 594, 596; *Ashton v. Lord Langdale*, 4 De G. & Sm. 402.

(*x*) 1 Ph. 185.

(*y*) *West v. Knight*, 1 Ch. Ca. 134; *Champion v. Smith, Duke*, 81; *Att.-Gen. v. Brown*, 1 Swanst. 265; *Att.-Gen. v. Mayor of Dublin*, 1 Bli. N. S. 312; *Att.-Gen. v. Earl of Lonsdale*, 1 Sim. 105; *Mayor of Wrexham v. Tamplin*, 21 W. R. 768; *Rogers v. Thomas*, 2 Keen, 8.

(*z*) *Dolan v. Macdermot*, L. R. 3 Ch. 676; cf. *Wilkinson v. Lindgren*, L. R. 5 Ch. 670; and distinguish *Morice v. Bishop of Durham*, 10 Ves. 522; *Williams v. Kershaw*, 5 Cl. & F. 111, and other cases cited *post*, pp. 36, 37.

institutions of the said borough (a), are charitable. And any trust of property, from whatever source derived, whether from the gift of the legislature or the sovereign, or from private gift, and however the trust became imposed, in favour of a parish or a town, or the inhabitants thereof, or a particular class of such inhabitants, is a charitable trust (b).

Grant of
pasture for
inhabitants.

Thus, an ancient grant of land for the pasture, during three months of the year, of the cows of "as many of the inhabitants" of a certain village "as were able to buy three cows," and during seven months of the rest of the year "to be in common for all the inhabitants" was held a charity (c).

Goodman v.
Mayor of Salt-
ash.

In *Goodman v. Mayor of Saltash* (d), it was proved that a prescriptive right to a several oyster fishery in a tidal river had been exercised from time immemorial by a borough corporation, without any qualification except that during a certain period of the year the free inhabitants of ancient tenements in the borough had from time immemorial exercised the privilege of dredging for oysters. Upon this, it was presumed by the Court that the original grant to the corporation was subject to a trust in favour of the free inhabitants in accordance with the usage, and the trust so created was held a charitable trust.

Wilson v.
Barnes.

In another case (e), the copyhold tenants of a manor, in consideration of their undertaking to keep a sea-dyke in repair, had had granted to them by Queen Elizabeth, as lady of the manor, the woods growing in a certain wood for the reparation of a portion of the dyke. The wood had been afterwards cut down and the proceeds invested by the tenants. The sea having receded, there was no longer any need to repair the sea-wall. It was held that the grant of the woods was a gift for charitable purposes.

Re Christ-
church Inclo-
sure Act.

So, also, where Inclosure Commissioners had allotted a portion of waste to the lord of the manor in trust for the occupiers for the time being of certain cottages for a turf common, and a railway

(a) *Mayor of Wrexham v. Tamplin*, 21 W. R. 768; *Att.-Gen. v. Mayor of Dartmouth*, 48 L. T. N. S. 933.

(b) *Att.-Gen. v. Heelis*, 2 S. & S. at p. 76; *Att.-Gen. v. Lord Hotham*, T. & R. 209; *Att.-Gen. v. Mayor of Carlisle*, 2 Sim. 437; *Att.-Gen. v. Webster*, L. R. 20 Eq. 483; *Goodman v. Mayor of Saltash*, 7 App. Cas. at p. 642; *Re St. Alphage, London Wall, Parish Estates*, 59 L. T. N. S. 614; *Re St. Bride's, Fleet Street*, 35 Ch. D. 147, n.; *Re St. Botolph Without Bishopsgate Parish Estates*, 35 Ch. D. 142; *Re St. Stephen, Coleman Street*, 39 Ch. D. 492; *Re Parish of St. Nicholas, Acons*, Times, 5 March, 1889; *contra*, *Att.-Gen.*

v. Heuer, 2 Vern. 387.

(c) *Wright v. Hobert*, 9 Mod. 64; *Att.-Gen. v. Corporation of Cashel*, 3 Dr. & W. 294.

(d) 7 App. Cas. 633; and see *Prestney v. Mayor of Colchester*, 21 Ch. D. at p. 119, and the Scotch cases of *Dyce v. Hay*, 1 Macq. 305, and *Sanderson v. Lees*, 22 Sess. Cas. 2nd Ser. 24; *Stanley v. Mayor of Norwich*, 3 Times L. R. 506; *Re Norwich Town Close Estate Charity*, 40 Ch. D. 298.

(e) *Wilson v. Barnes*, 38 Ch. D. 507. See *Att.-Gen. v. Mayor of Galway*, 1 Moll. 95; *Att.-Gen. v. Mayor, &c. of Carlisle*, 2 Sim. 437.

company had purchased a portion of the land, it was held that the lord of the manor was entitled to so much of the purchase-money as represented the value of the soil, and that the remainder was subject to a charitable trust for the benefit of the occupiers of the cottages (*f*).

In *Prestney v. Mayor, &c. of Colchester* (*g*), it seems to have been considered that property held by the corporation on trust for the freemen of the borough was not subject to a charitable trust; but this decision seems somewhat inconsistent with the cases previously cited (*h*).

Prestney v. Mayor, &c. of Colchester.

There have been some cases, called by Jessel, M. R. (*i*), anomalous cases, in which it appears to have been considered that an advowson cannot be held upon a charitable trust, even when the trust is for the benefit of the parish or parishioners for ever (*k*).

Advowson.

On the other hand, there are old cases in which a trust of an advowson for the use or benefit of a parish has been held to be charitable (*l*).

In this conflict of authorities it has recently been decided that an advowson vested in trustees for the benefit of the parish, the vicar being always chosen by the parishioners, is charity property (*m*).

Gifts in aid of the rates are charitable. Thus, funds derived from the gift of the Crown or of the legislature, or from private gifts, for paving, lighting, cleaning, and improving a town are within the equity of the Statute of Elizabeth, and are charitable (*n*).

Gifts in aid of rates.

Gifts to bring spring water for the inhabitants of a town (*o*), to build a sessions house or house of correction (*p*), for the repair of highways (*q*), or bridges (*r*), or for repairing the church and

(*f*) *Re Christchurch Inclosure Act*, 38 Ch. D. 520.

(*g*) 21 Ch. D. at p. 119.

(*h*) See *Goodman v. Mayor of Saltash*, and *Re Norwich Town Close Estate Charity*, *supra*.

(*i*) *Att.-Gen. v. Webster*, L. R. 20 Eq. at p. 491.

(*k*) *Att.-Gen. v. Parker*, 1 Ves. Sen. 43; *Att.-Gen. v. Forster*, 10 Ves. 335; *Att.-Gen. v. Rutter*, 2 Russ. 101, n.; *Att.-Gen. v. Newcombe*, 14 Ves. 1; *Fearon v. Webb*, *ibid.* 13. And see *Att.-Gen. v. Webster*, *supra*.

(*l*) *Att.-Gen. v. Scott*, 1 Ves. Sen. 413; *Foley v. Att.-Gen.*, 2 Bro. P. C. 368; *Att.-Gen. v. Bishop of Litchfield*, 5 Ves. 825; *Att.-Gen. v. Ward*, 7 L. J. O. S. Ch. 114, where it was held that an advowson might be given to a charitable use.

(*m*) *Re St. Stephen, Coleman St.*, 39 Ch. D. 492. As to a vicarage house held upon trust for the parishioners there could, of course, be no question: *ibid.* at p. 505.

(*n*) Per Leach, V.-C., in *Att.-Gen. v. Heelis*, 2 S. & S. at p. 77; and see *Howse v. Chapman*, 4 Ves. 542; *Att.-Gen. v. Corporation of Limerick*, Beat. 563; S. C. on appeal, *nom. Gort v. Att.-Gen.*, 6 Dow. 136; *Goodman v. Mayor of Saltash*, 7 App. Cas. 633, 642.

(*o*) *Jones v. Williams*, Amb. 651.

(*p*) *Duke*, 109, 136. See *Att.-Gen. v. Heelis*, 2 S. & S. at p. 76.

(*q*) *Eliham Parish v. Warreyn*, Duke, 67; *Collison's Case*, Hob. 136.

(*r*) *Forbes v. Forbes*, 18 Beav. 552; and see *Att.-Gen. v. Corporation of Shrewsbury*, 6 Beav. 220.

conduits of the town, the relief of the poor and maintenance of fortifications (s), or for furnishing a lifeboat (t), are charitable.

Poor rate.

So a gift to churchwardens in aid of the poor rate (u), or to a corporation to enable it to perform its statutory obligation of providing relief for the poor (v), is charitable.

Workhouse.

Where part of a common was granted to a vestry for a workhouse and cemetery, and another part for the benefit of the poor of the parish, it was held that the grant was charitable (x).

In one case (y) a conveyance of land to the overseers of the poor and churchwardens, to be used as a poor-house, was held not to be within 9 Geo. II. c. 36 (z), on the ground that it was not a conveyance to charitable uses. But this is inconsistent with the cases previously cited (a), and has recently been expressly dissented from (b).

Source from which funds derived immaterial.

Sir John Leach was of opinion that it was the source from which funds were derived, and not the purposes to which they were dedicated, which constituted them charitable; and that although funds derived from the gift of the Crown, or the gift of the legislature for general public purposes, would be charitable, rates levied under Act of Parliament for such purposes, being in no sense derived from bounty or charity in the most extensive sense of the word, would not be charitable (c).

This view is, however, opposed to the current of authorities; and it must be considered that in determining whether a fund is charitable the source from which it was derived is not to be regarded, but merely the purposes to which it is applied (d).

Funds derived from rates and tolls.

Funds, therefore, applicable to general public purposes, even though derived from taxation, are charitable (e).

Thus, "an imposition granted upon commodities imported or transported, to be employed upon repair of ports or havens where

(s) *Att.-Gen. v. Mayor of Dartmouth*, 48 L. T. N. S. 933.

(t) *Johnston v. Swann*, 3 Madd. 457; *Re Richardson's Will*, 58 L. T. N. S. 45.

(u) *Doe v. Howells*, 2 B. & Ad. 744.

(v) *Luckraft v. Pridham*, 6 Ch. D. 205.

(x) *Att.-Gen. v. Blizard*, 21 Beav. 233. See also *Att.-Gen. v. Heelis*, 2 S. & S. 67; *Att.-Gen. v. Corporation of Berwick-upon-Tweed*, Tambl. 239; *Webster v. Southey*, 36 Ch. D. 9; *Re St. Botolph Without Bishopsgate Parish Estates*, 35 Ch. D. 142.

(y) *Burnaby v. Barsby*, 4 H. & N. 690.

(z) Now Part II. of the Mortmain and Charit. Uses Act, 1888, *post*.

(a) *Att.-Gen. v. Blizard*, *supra*. See also the judgment of Leach, V.-C., in

Att.-Gen. v. Heelis, *supra*; *Doe v. Howells*, *supra*; *Att.-Gen. v. Corporation of Berwick-upon-Tweed*, *supra*.

(b) *Webster v. Southey*, 36 Ch. D. 9. See also *Re St. Botolph Without Bishopsgate Charity Estates*, 35 Ch. D. 142.

(c) *Att.-Gen. v. Heelis*, 2 S. & S. at p. 77. See *Att.-Gen. v. Mayor of Galway*, 1 Moll. 95.

(d) *Att.-Gen. v. Brown*, 1 Swanst. 265; *Att.-Gen. v. Mayor of Dublin*, 1 Bli. N. S. at pp. 334—336; *Att.-Gen. v. Eastlake*, 11 Hare, 205; *Re St. Bride's, Fleet Street*, 35 Ch. D. 147, n.; *Re St. Botolph Without Bishopsgate Parish Estates*, 35 Ch. D. at pp. 150, 151; and see *Hall v. Derby Sanitary Authority*, 16 Q. B. D. at p. 171.

(e) *Ibid*. See also *post*, p. 70.

they shall land, is a charitable use" (f). So also an impost levied under an Act of Parliament to protect the coast against encroachment by the sea (g), the duties on coal imposed after the fire of London for re-building St. Paul's Church (h), tolls granted for the reparation of bridges and walls (i), funds raised by means of water rates (k), or rates for paving, lighting, and improvement purposes (l). Similarly land purchased under statutory authority for a burial ground (m).

It seems that land purchased by one of the wards of the City of London out of common moneys belonging to the ward, for the purpose of providing a watchhouse and suitable rooms for transacting the business and keeping the records of the ward, is not held on a charitable trust (n). Property purchased by ward of City of London out of its own funds.

Gifts to institutions for the public benefit are charitable. Thus a gift for a botanical garden for the public benefit (o); for a public library (p), or museum (q); to the Royal Society, the object of which is the improvement of natural knowledge; to the Royal Geographical Society, the object of which is the improvement and diffusion of geographical knowledge (r); to the Royal Humane Society (s), the Royal National Lifeboat Institution, or the Royal Literary Society of London (t). Institutions for public benefit.

Gifts for the benefit or protection of animals are also charitable. Thus, gifts for establishing an institution for investigating, studying, and curing maladies, distemper, and injuries any quadrupeds or birds useful to man may be found subject to (u); for the establishment of lectures against (x), or otherwise preventing cruelty to animals (y); to promote prosecutions for cruelty to animals (z), or to Protection of animals.

(f) Duke, p. 135.

(g) *Att.-Gen. v. Brown*, 1 Swanst. 265; *Att.-Gen. v. Mayor of Dublin*, 1 Bli. N. S. at p. 334.

(h) *Att.-Gen. v. Brown*, *supra*, at p. 297; *Att.-Gen. v. Heelis*, 2 S. & S. at pp. 76, 77.

(i) *Att.-Gen. v. Corporation of Shrewsbury*, 6 Beav. 220.

(k) *Att.-Gen. v. Mayor of Dublin*, 1 Bli. N. S. 312. See also *Att.-Gen. v. Corporation of Plymouth*, 9 Beav. 67, where the corporation were authorized by statute to construct a watercourse for the supply of fresh water to a town.

(l) *Att.-Gen. v. Bastlake*, 11 Hare, 205.

(m) *Re St. Pancras Burial Ground*, L. R. 3 Eq. 173.

(n) *Finnis and Young to Forbes and Pochin* (No. 1), 24 Ch. D. 587.

(o) *Thwainley v. Bedwell*, 6 Ves. 194; *Harrison v. Corporation of Southampton*, 2 Sm. & G. 387.

(p) *Abbott v. Fraser*, L. R. 6 P. O. 96.

(q) *Trustees of the British Museum v. White*, 2 S. & S. 594; *Re Holburne, Coates v. Mackillop*, 53 L. T. N. S. 212; *Re Alsop, Gell v. Carver*, 1 Times L. R. 4; and see *Thomson v. Shakespeare*, John. at p. 616.

(r) *Beaumont v. Oliveira*, L. R. 4 Ch. 309; *Royal Society of London and Thompson*, 17 Ch. D. 407.

(s) *Beaumont v. Oliveira*, *supra*.

(t) *Thomas v. Howell*, L. R. 18 Eq. 198; *Re Richardson's Will*, 58 L. T. N. S. 45; *Buckley v. Royal National Lifeboat Institution*, 5 Times L. R. 320.

(u) *University of London v. Yarrow*, 1 De G. & J. 72. A trust to support specific animals is not charitable: *Re Dean, Cooper-Dean v. Stephens*, 5 Times L. R. 404.

(x) *Ibid.*

(y) *Marsh v. Means*, 3 Jur. N. S. 790.

(z) *Re Vallance*, Set. 4th ed. p. 697.

the Royal Society for the Prevention of Cruelty to Animals (*a*); to anti-vivisection societies (*b*), and the Home for Lost Dogs (*c*), have all been held charitable.

Private
charity.

A bequest of residue "to be given in private charity" has been held to be not charitable, on the ground that the charities recognized by the Court are public in their nature and such as the Court can see to the execution of (*d*).

The same is the case with regard to gifts to private charities (*e*), but it is not clear where the line between a public and private charity is to be drawn. In *Att.-Gen. v. Pearce* (*f*), Lord Hardwicke said that it is the extensiveness of a charity which constitutes it a public charity (*g*).

It is not, however, easy to say what ought to be called private charities; and Lord Hardwicke said, in *Att.-Gen. v. Pearce* (*h*), that it was "almost impossible to say which (charitable institutions) are public and which are private in their nature." And, after all, the real question in every case is whether or not the object is charitable within the meaning of the Statute of Elizabeth.

Bequests to "public and private charities" (*i*), "to be distributed in charity . . . either to private individuals or public institutions" (*k*), have been held to be charitable.

Institutions
not for pub-
lic benefit.

Gifts to various institutions have been held not charitable, on the ground that they were not intended to benefit the public, but were for purposes of a private character.

Thus a devise or bequest to the building fund of a mechanics' institution (*l*), or to found a private museum (*m*), or to the trustees of a library kept on foot by and for the benefit of the subscribers (*n*), or a Sacred Harmonic Society (*o*), or to distribute rents and profits

(*a*) *Re Douglas, Obert v. Barrow*, 35 Ch. D. 472; *Tatham v. Drummond*, 4 De G. J. & Sm. 484.

(*b*) *Re Douglas, Obert v. Barrow, supra*; *Re Joy, Purday v. Johnson*, 60 L. T. N. S. 175.

(*c*) *Re Douglas, Obert v. Barrow, supra*.
(*d*) *Ommanney v. Butcher*, T. & R. 260. See, however, *Re Sinclair's Trust*, 13 L. R. Ir. 150; *Nightingale v. Goulbourn*, 2 Ph. 594; and *post*, p. 36.

(*e*) See cases cited *infra*.

(*f*) 2 Atk. at p. 88.

(*g*) See *Dolan v. Macdermot*, L. R. 3 Ch. at p. 678; *Hall v. Derby Sanitary Authority*, 16 Q. B. D. at p. 172. A charity is not, however, necessarily private because it is confined to a limited class of objects: see *Att.-Gen. v. Laues*, 8 Hare, at p. 41, *ante*, p. 3. Cf. also the cases on the rateability of charities, *post*, pp. 367, 368.

(*h*) *Supra*, and see *Anon.*, 3 Atk. 277; *Nash v. Morley*, 5 Beav. 177.

(*i*) *Johnston v. Swann*, 3 Madd. 457; but see the observations of Lord Cottenham in *Ellis v. Selby*, 1 My. & C. at pp. 292, 293.

(*k*) *Horde v. Earl of Suffolk*, 2 My. & K. 59.

(*l*) *Re Dutton*, 4 Ex. D. 54; *Re Sheraton's Trusts*, W. N. 1884, 174; cf. *Anon.*, 3 Atk. 277.

(*m*) *Thomson v. Shakespeare*, 1 De G. F. & J. 399. The members for the time being of a voluntary society which has no provisions as to the disposition of its property, are entitled to divide the funds among themselves: *Brown v. Dale*, 9 Ch. D. 78.

(*n*) *Carr v. Long*, 2 De G. F. & J. 75.

(*o*) *Re Alsop, Gell v. Carver*, 1 Times L. R. 4.

annually among certain families according to their circumstances (*p*), or to a chartered company in London to increase the stock of corn they were compelled to keep (*q*).

In cases of this kind where an indefinite trust is created it is void for perpetuity (*r*).

Bequests of an indefinite and general character for purposes of benevolence or general liberality are not charitable, and are consequently void for uncertainty (*s*). A bequest for missionary purposes (*t*), or for "purchasing such books as may have a tendency to promote the interests of virtue and religion and the interests of mankind" (*u*), "for such uses as trustees should think fit" (*x*), "to such persons as trustees should think proper" (*y*) or most deserving (*z*), has been held void as being too uncertain.

Gifts of general and indefinite character.

The question what gifts are void on the ground of uncertainty is further dealt with by Chap. III. (*a*).

Other bequests, apparently charitable, are void on the ground that they are contrary to the policy of the law. Thus, although by the Statute of Elizabeth "relief or redemption of prisoners" is mentioned as a charitable purpose, nevertheless a bequest to be applied in purchasing the discharge of persons committed to prison for non-payment of fines under the Game Laws, was held void, as being contrary to public policy (*b*).

Gifts contrary to policy of law.

A bequest "towards the political restoration of the Jews to Jerusalem and to their own land," was held not to be charitable and to be void. "If it could," said Knight-Bruce, V.-C., "be understood to mean anything, it was to create a revolution in a friendly country. Jews might at present reside in Jerusalem; and if the acquisition of political power by them was intended, the promotion of such an object would not be consistent with our amicable relations with the Sublime Porte" (*c*).

(*p*) *Liley v. Hey*, 1 Hare, 580; but see *Gillam v. Taylor*, L. R. 16 Eq. 581; *ante*, p. 4.

(*q*) *Att.-Gen. v. Haberdashers' Co.*, 1 My. & K. 420.

(*r*) *Post*, p. 57.

(*s*) *Morice v. Bishop of Durham*, 10 Ves. 522; *Williams v. Kershaw*, 5 Cl. & F. 111; *Ellis v. Selby*, 7 Sim. 352; *Vesey v. Jamson*, 1 S. & S. 69; *Kendall v. Granger*, 5 Beav. 300. And see, further, as to this, *post*, p. 36. Distinguish *Dolan v. Macdermot*, L. R. 3 Ch. 676; *Re Sutton*, *Stone v. Att.-Gen.*, 28 Ch. D. 464; *Re Douglas*, *Obert v. Barrow*, 35 Ch. D. 472. See, also, *Jemmit v. Verri*, Amb. 585, n., and the observations thereon of Lord Cottenham

in *Ellis v. Selby*, 1 My. & C. at p. 292.

(*t*) *Scott v. Brownrigg*, 9 L. R. Ir. 246.

(*u*) *Browne v. Yeall*, 7 Ves. 50, n.; *Budgett v. Hulford*, W. N. 1873, 175.

(*x*) *Doe v. Copestake*, 6 East, 328; *Fowler v. Garlike*, 1 R. & M. 232; *Buckle v. Bristow*, 13 W. R. 68.

(*y*) *Gibbs v. Rumsey*, 2 V. & B. 295.

(*z*) *Harris v. Du Pasquier*, 20 W. R. 668; but see *ante*, p. 3.

(*a*) *Post*, pp. 36 *et seq.*

(*b*) *Thrupp v. Collett*, 26 Beav. 125, and see *ante*, p. 3, n. (*z*).

(*c*) *Habershon v. Vardon*, 4 De G. & Sm. 467; see, also, *Sims v. Quintan*, 17 Ir. Ch. R. 43; *Walsh v. Walsh*, Ir. R. 4 Eq. 396.

CHAPTER II.

SUPERSTITIOUS USES.

Definition of superstitious use. A SUPERSTITIOUS use has been defined to be "one which has for its object the propagation of the rites of a religion not tolerated by the law" (a).

Origin of law of superstitious uses. The law relating to superstitious uses depends partly upon the common law and partly upon statutes. The King, it has been laid down, "is by the common law obliged, and for that purpose entrusted and empowered, to see that nothing be done to the disherison of the Crown, or the propagation of a false religion" (b).

There has been no statute making superstitious uses void generally (c). The earliest Act relating to them was the 23 Hen. VIII. c. 10 (d). By that Act assurances and trusts of land to the use of parish churches, chapels, &c., or to uses to have obits perpetual, or a continual service of a priest after the 1st of March, 1531-2, were declared void for any term exceeding twenty years (e).

1 Edw. VI. c. 14. The next Act 1 Edw. VI. c. 14 (f), affected previous dispositions only. It vested in the Crown certain free chapels and chantries and lands and hereditaments thereto belonging theretofore given for finding a priest (g), lands given for terms of years as to such terms (h), and lands and other hereditaments given or appointed "to the finding or maintenance of any anniversary or obit, or other like thing, intent or purpose (i), or of any light or lamp in any church or chapel, to have continuance for ever," and where part of the revenue of any lands or hereditaments had been given or appointed for such purposes, then such part was vested in the King (j).

(a) Boyle on the Law of Charities, 242.

(b) *Rees v. Portington*, 1 Salk. 162.

(c) Per Grant, M. R., in *Cary v. Abbot*, 7 Ves. at p. 495.

(d) Repealed and not re-enacted by the Mortmain and Charit. Uses Act, 1888, s. 13, *post*.

(e) The Act contained a saving clause in favour of certain cities and towns

corporate.

(f) Still in force.

(g) Sect. 2.

(h) Sects. 3, 4.

(i) Praying for souls comes within these words: *Adams v. Lambert*, 4 Co. 104 b; *Att.-Gen. v. Fishmongers' Co.*, 5 My. & C. 11.

(j) Sects. 5, 6.

By 1 Geo. I. c. 55 (*k*), provision was made for appointing commissioners to inquire (*inter alia*) of estates given to superstitious uses in order to raise money out of them for use of the public.

The persons who, differing from the established religion, were formerly held to be obnoxious to the law against superstitious uses, were Protestant Dissenters, Roman Catholics, and Jews.

Persons formerly obnoxious to law of superstitious uses. Old decisions as to Protestant Dissenters.

Gifts in favour of the places of worship, ministers, or schools of Protestant Dissenters were formerly invalid, as being superstitious (*l*).

Roman Catholics.

So bequests for the maintenance of Roman Catholic monasteries, whether at home or abroad (*m*), for maintaining Roman Catholic priests (*n*), for such purposes as the superior of a nunnery should judge most expedient (*o*); gifts for masses, or prayers for a person's soul (*p*), or for disseminating Roman Catholic doctrines, either by the education of poor scholars or the children of the poor (*q*), by maintaining a Roman Catholic priest (*r*), or by publication of a treatise inculcating the doctrine of the supremacy of the Pope in ecclesiastical matters (*s*), have been held to be invalid.

Similarly, in the case of Jews, a bequest for the maintenance of a Jesiba, or assembly for reading the Jewish law and advancing the Jewish religion, was held invalid (*t*). It was stated, however, that bequests for the support of poor persons of that religion were good (*u*).

A bequest for the purchase of meat and wine fit for the service of the two nights of Passover was held good, on the ground that it was intended to enable persons professing the Jewish religion to observe its rites (*x*).

The rigour of the old law on this subject was, however, relaxed by various statutes.

Rigour of old law relaxed.

(*k*) Repealed by 31 Geo. III. c. 32, s. 21, the repealing section being itself repealed by 34 & 35 Vict. c. 48.

(*l*) *Att.-Gen. v. Baxter*, 1 Vern. 248. This decision was afterwards reversed: *nom. Att.-Gen. v. Hughes*, 2 Vern. 105; but not because the general principle upon which it was decided was erroneous, but because a wrong interpretation had been placed upon the testator's will. See per Lord Hardwicke in *Moggridge v. Thackwell*, 7 Ves. at p. 76. The reversal was, however, subsequent to the Toleration Act, 1 Will. & M. c. 18. See also *Att.-Gen. v. Whorwood*, 1 Ves. Sen. at p. 537.

(*m*) *De Garcin v. Lawson*, 4 Ves. 433, n. See also *post*, pp. 23, 24.

(*n*) *Jones and Cross' Case*, Cases in the House of Lords, 1690, cited 2 Vern. 266, *nom. Gates and Jones' Case*.

(*o*) *Smart v. Prujean*, 6 Ves. 560; and see *Sims v. Quinlan*, 17 Ir. Ch. R. 43.

(*p*) See *Adams v. Lambert*, 4 Co. 529, and cases there cited; *West v. Shuttleworth*, 2 My. & K. 684; *Att.-Gen. v. Fishmongers' Co.*, 5 My. & C. 11.

(*q*) *Croft v. Esetts*, Moo. 784; *Att.-Gen. v. Power*, 1 Ball & B. 145; *Cary v. Abbott*, 7 Ves. 490.

(*r*) *Att.-Gen. v. Todd*, 1 Keen, 803.

(*s*) *De Themmines v. De Bonneval*, 5 Russ. 288; see also *Briggs v. Hartley*, 14 Jur. 683.

(*t*) *De Costa v. De Paz*, 2 Swanst. 487, n.; and see *Isaac v. Gompertz*, cited 7 Ves. 61.

(*u*) *De Costa v. De Paz*, *supra*, at p. 489; cf. *Att.-Gen. v. Baxter*, 1 Vern. 248, as explained in *Moggridge v. Thackwell*, 7 Ves. at p. 76.

(*x*) *Straus v. Goldsmid*, 8 Sim. 614.

Protestant
Dissenters.

The first of these was the Toleration Act (*y*), passed in 1688. By that and subsequent statutes (*z*) the schools and places for religious worship, education, and charitable purposes of Protestant Dissenters were exempted from the operation of certain penal and disabling laws to which they had previously been liable.

Roman
Catholics.

Roman Catholics were the next to be relieved. By the Roman Catholic Charities Act, 1832 (*a*), they were placed on the same footing as Protestant Dissenters.

The Act provides that from and after the passing thereof his Majesty's subjects professing the Roman Catholic religion, in respect to their schools, places for religious worship, education, and charitable purposes in Great Britain, and the property held therewith, and the persons employed in or about the same, shall in respect thereof be subject to the same laws as the Protestant Dissenters are subject to in England in respect to their schools and places for religious worship, education, and charitable purposes, and not further or otherwise (*b*).

But nothing in the Act is to repeal or alter any provision in 10 Geo. IV. c. 7 (*c*), respecting the suppression or prohibition of the religious orders or societies of the Church of Rome bound by monastic or religious vows (*d*). And it was provided that all property to be acquired or held for such purposes of religious worship and education, and charitable purposes in England and Wales, should remain subject to the provisions of 9 Geo. II. c. 36 (*e*), and to the same laws as Protestant Dissenters were subject to in England in respect of the acquiring or holding of such property (*f*), and that nothing in the Act should be taken to extend the last recited Act (9 Geo. II. c. 36) to Scotland (*g*).

Jews.

Lastly, by 9 & 10 Vict. c. 59, the privileges already granted to Protestant Dissenters were extended to Jews.

(*y*) 1 Will. & M. c. 18, repealed by 34 & 35 Vict. c. 48, except sect. 5, so much of sect. 8 as specifies the service and offices from which certain persons are exempt, and sect. 15.

(*z*) 19 Geo. III. c. 44; 52 Geo. III. c. 155; and 53 Geo. III. c. 160, repealed by the Stat. Law Rev. Act, 1873. By the last of these Acts Unitarians were placed on the same footing as other dissenters.

(*a*) 2 & 3 Will. IV. c. 115; and see 18 & 19 Vict. c. 86, s. 2.

(*b*) Sect. 1. See also 18 & 19 Vict. c. 86, s. 2.

(*c*) By 10 Geo. IV. c. 7, ss. 28—38, stringent provisions are enacted, designed, as stated in sect. 28, to effect the gradual suppression and final prohibi-

tion of Jesuits and other religious orders of the Church of Rome bound by monastic or religious vows. The sections provided for the registration of members of such orders then resident in the United Kingdom, and they imposed penalties on such persons coming into the kingdom without licence, or on the admission of persons as members of such orders.

(*d*) Sect. 4. A provision similar to this is contained in sect. 7 of the Roman Catholic Charities Act, 1860, *post*, Part III. of this Book.

(*e*) Now Part II. of the Mortmain and Charit. Uses Act, 1888, *post*.

(*f*) Sect. 5.

(*g*) *Ibid*.

That Act provides (*h*) that "Her Majesty's subjects professing the Jewish religion in respect of their schools, places of religious worship, education, and charitable purposes, and the property held therewith, shall be subject to the same laws as her Majesty's Protestant subjects dissenting from the Church of England are subject to, and not further or otherwise."

Both the Roman Catholic Charities Act, 1832 (*i*), and 9 & 10 Vict. c. 59 (*j*), were retrospective in their operation.

With regard to Protestant Dissenters, it has, since the passing of the Toleration Act, been decided that charitable bequests in favour of schools, chapels, and preachers of various denominations of Dissenters, such as Quakers, Baptists, and Irvingites, are valid (*k*).

Similarly, a bequest to Unitarian chapels has been held good (*l*); for although persons denying the Trinity were expressly excluded from the protection of the Toleration Act, the clause by which they were excluded was repealed by a subsequent statute (*m*).

Protestant Dissenters have consequently, since the Toleration Act, been entitled to have the trusts relating to their charities, including trusts relating to their places of worship, regulated by the Court (*n*). And Roman Catholics and Jews having been placed upon the same footing, have now the same rights.

The jurisdiction of the Charity Commissioners extends to all charities in England and Wales, for the benefit of Dissenters, Roman Catholics, and Jews as much as any others (*o*).

Since the passing of 2 & 3 Will. IV. c. 115, it has been decided that a legacy to be applied to the use of a Roman Catholic college (*p*), or for the use of Roman Catholic priests (*q*), is valid.

2 & 3 Will.

IV. c. 115,

and 9 & 10

Vict. c. 59,

retrospective.

Decisions

since relieving

Acts.

Dissenters.

Right to have

trusts of

charities exe-

cuted by

Court.

Jurisdiction

of Charity

Commis-

sioners.

Roman

Catholics.

(*h*) Sect. 2.
(*i*) 2 & 3 Will. IV. c. 115; *Bradshaw v. Tasker*, 2 My. & K. 221; except as to suits previously commenced: *Att.-Gen. v. Todd*, 1 Keen, 803. See *Att.-Gen. v. Drummond*, 1 Dr. & W. at pp. 379, 380.

(*j*) *Re Michel's Trusts*, 28 Beav. 39.
(*k*) *Att.-Gen. v. Hickman*, 2 Eq. Cas. Abr. 193, pl. 14; *Waller v. Childs*, Amb. 524; *Att.-Gen. v. Cock*, 2 Ves. sen. 273; *Att.-Gen. v. Pearson*, 3 Mer. 353; *Att.-Gen. v. Shore*, 11 Sim. 592, 616; *Att.-Gen. v. Laues*, 8 Hare, 32; *West v. Shuttleworth*, 2 My. & K. 684. Lord Tenterden's opinion *contra* in *Doe v. Hawthorn*, 2 B. & Al. at p. 103, appears clearly wrong. See also *ante*, p. 10.

(*l*) *Shrewsbury v. Hornby*, 5 Hare, 406; *Re Barnett*, 29 L. J. Ch. 871.

(*m*) 53 Geo. III. c. 160, repealed by the Stat. Law Rev. Act, 1873.

(*n*) *Att.-Gen. v. Pearson*, 3 Mer. at pp. 396, 397; *Att.-Gen. v. Cock*, 2 Ves.

Sen. 273; *Att.-Gen. v. Fowler*, 15 Ves. at p. 88; *Att.-Gen. v. Wansay*, 15 Ves. 231; *Davis v. Jenkins*, 3 V. & B. 151; *Att.-Gen. v. Dudley*, G. Coop. 146; *Att.-Gen. v. Molland*, 1 You. 562; *Att.-Gen. v. Welsh*, 4 Hare, 572; and whether the trusts are declared in writing or not: *Att.-Gen. v. Murdoch*, 7 Hare, 445.

(*o*) See the definition of charity in s. 66 of the Charit. Trusts Act, 1853, *post*. Roman Catholics were formerly excepted from the Acts, but that exception has since been removed, see *n*. (*a*) to s. 1 of the Roman Catholic Charities Act, 1860, *post*. The trusts of places of worship were also formerly entirely exempted from the Acts, but that exemption has, to a great extent, been removed by s. 15 of the Charit. Trusts Act, 1869, *post*. See note to that section.

(*p*) *Walsh v. Gladstone*, 1 Ph. 290.

(*q*) *Att.-Gen. v. Gladstone*, 13 Sim. 7.

In Ireland it has been held that a bequest of an annuity to the monks of a particular place, to provide clothing for the poor children attending their schools, and of another annuity to a parish priest to provide for the expense of an organ and organist of a Roman Catholic chapel, is good (o).

Jews.

Since the passing of 9 & 10 Vict. c. 59, the same has been the case with regard to Jews.

Thus a bequest by a Jew for educational purposes, and for prayers to be recited on the anniversary of his death, has been held valid.

Re Michel's Trust.

A testator bequeathed an annuity to the parnositim, or wardens of a congregation for the time being, to be paid by them to three qualified persons to learn in their Beth Hammadrass, or college, two hours daily for ever, and on every anniversary of his death to say the prayer called in Hebrew Candish (p). It was stated that the term to "learn in the Beth Hammadrass, or college, for two hours daily," signified to study either the Bible or the Talmud; and that the "Candish" was a short Hebrew prayer in the praise of God, and expressive of resignation to his will; that both were acts of piety, and that the prayer was generally said by the sons of the deceased during the year of mourning and on the anniversary of the death, but if there were none, it was either said by the relatives or by some other person. Romilly, M. R., held the bequest to be valid. "Here," said his Honour, "nothing is said as to praying for the soul of any one. . . . [There is] no reference to praying for souls of the founders, and I do not know that there would be anything superstitious in a bequest by members of the Church of England to wardens to select a scholar to learn the Greek Testament two hours daily, and on a certain day to repeat the Lord's Prayer, although the day selected may be the anniversary or birthday of the founder. There is nothing here to show that this was to be done under the notion that the soul of the founder would derive any benefit from it."

Purposes still held superstitious.

The relieving Acts above mentioned do not, however, repeal the whole law of superstitious uses. They expressly make valid trusts for schools, places for religious worship and education; they relate also to charitable purposes generally. Under these words trusts for purposes which, although of a charitable nature, would formerly have been considered superstitious—as for instance, trusts for the promotion and advancement of the Roman Catholic or Jewish religion, or for the general benefit of dissenting sects—are un-

(o) *Carbery v. Cox*, 3 Ir. Ch. R. 231.

(p) *Re Michel's Trust*, 28 Beav. 39.

questionably valid. But trusts for purposes which do not come within those words and are superstitious, are not within the protection of the Acts and are still invalid.

Bequests for prayers for the soul of the testator are still void as superstitious (g). Prayers for testator's soul.

In *West v. Shuttleworth* (r), a testatrix directed sums to be paid to certain Roman Catholic priests and chapels, that she might have the benefit of their prayers and masses; and she gave the residue of her property to trustees, upon trust to pay £10 each to the ministers of certain Roman Catholic chapels, for the benefit of their prayers for the repose of her soul and that of her deceased husband, and to appropriate the remainder as they might judge best to promote the Catholic Christian religion among the poor and ignorant inhabitants of certain villages. It was held that the gifts to priests and chapels for prayers and masses were void, as being superstitious, but that the gift of the residue was valid. West v. Shuttleworth.

In *Heath v. Chapman* (s), funds were transferred to trustees upon trust for certain Roman Catholic chapels, for saying masses and requiems for the souls of the donor and others, and for the souls of "the poor dead," and for other pious uses; and it was held that the gifts for requiems and masses for the dead were superstitious and void; and that the pious uses could not, as religious uses, be separated from the others, and failed also. Heath v. Chapman.

So, also, bequests for the performance of religious ceremonies to the testatrix's late husband and herself have been held void (t). Religious ceremonies for testator.

In Ireland bequests for masses for the testator's soul are valid (u). And it has been recently decided that a bequest for masses is a "pious use" within sect. 16 of the Charitable Donations and Bequests (Ireland) Act (x). Valid in Ireland.

It seems probable that a gift such as that which was held void in *De Themmines v. De Bonneval* (y), viz., a gift for the publication of a treatise inculcating the doctrine of papal supremacy, would still be invalid. Promoting doctrine of papal supremacy.

A bequest for the education and maintenance of priests of the Bequest for monastic bodies.

(g) *Adams v. Lambert*, 4 Co. 529, and cases there cited; *Att.-Gen. v. Fishmongers' Co.*, 5 My. & C. 11; *Re Blundell's Trusts*, 30 Beav. 360.

(r) 2 My. & K. 684. As to what are not prayers for the soul of the testator, see *Re Michel's Trusts*, 28 Beav. 39, *supra*.

(s) 2 Drew. 417.

(t) *Yeap Cheah Neo v. Ong Cheng Neo*, L. R. 6 P. C. at p. 396.

(u) *Commissioners of Charit. Donations v. Walsh*, 7 Ir. Eq. R. 34, n.; *Read v.*

Hodgens, *ibid.* 17; *Brennan v. Brennan*, Ir. R. 2 Eq. 321; *Bradshaw v. Jackman*, 21 L. R. 1r. 12. See, however, *Felan v. Russell*, 4 Ir. Eq. R. 701; *Dillon v. Reilly*, Ir. R. 10 Eq. 152. Such a gift may, nevertheless, be void for remoteness: *Morrow v. McConville*, 11 L. R. Ir. 236; and see *Yeap Cheah Neo v. Ong Cheng Neo*, *supra*.

(x) 7 & 8 Vict. c. 97; *Boyle v. Boyle*, Ir. R. 11 Eq. 433.

(y) 5 Russ. 288; *ante*, p. 19.

order of St. Dominick, and a bequest for the redemption of the rent of a Roman Catholic Church in Ireland held in trust by certain Dominican monks, has been held invalid as contrary to the policy of 10 Geo. IV. c. 7 (s). And it makes no difference whether the monastic body settled in the country after or before the passing of this Act (a).

Colonies.

Although the statutes relating to superstitious uses may not be imported into our colonies, gifts therein to such uses in perpetuity, not being charitable, are invalid (b).

Cy-près application of charitable gift being also superstitious.

The rule has been that where a general charitable intention is shown, a bequest which fails on the ground of superstition is applied *cy-près* to valid charitable objects (c), and that such application must be made by the Crown under the sign manual (d).

No *cy-près* application where no charitable intention shown.

This would not, however, be the case unless the bequest, besides being superstitious, were also charitable, for unless a charitable intention is shown, there can be no *cy-près* application (e).

Thus, a bequest to Roman Catholic chapels and priests, that the testatrix might "have the benefit of their prayers and masses," which was void as superstitious, was held not to be applicable by the sign manual; for the intention was "not to benefit the priests or support the chapels, but to secure a supposed benefit to the testatrix herself" (f).

Under present law no charitable gifts superstitious.

And inasmuch as in the present state of the law no gifts for charitable purposes can be void on the ground of superstition (g), the necessity for the *cy-près* application of a gift which fails for superstition cannot arise.

Roman Catholic Charities Act, 1860.

A provision for the *cy-près* application of superstitious bequests in certain cases is made by the Roman Catholic Charities Act, 1860 (h).

By that Act it is provided that gifts of real or personal estate upon any lawful charitable trust for the exclusive benefit of Roman Catholics shall not be invalidated by reason of the same being also subject to a superstitious trust. The Court or the Charity Commissioners may in such a case apportion the parts subject to the valid and the illegal trusts respectively; the part apportioned to the law-

(s) *Sims v. Quinlan*, 17 Ir. Ch. B. 43; *Liston v. Keegan*, 9 L. R. Ir. 531; *Murphy v. Cheevers*, 17 L. R. Ir. 205; and see, also, *Walsh v. Walsh*, Ir. R. 4 Eq. 396; *Kehoe v. Wilson*, 7 L. R. Ir. 10; and *De Garcin v. Lawson*, 4 Ves. 433, n. For the provisions of 10 Geo. IV. c. 7, see *ante*, p. 20, n. (c).

(a) *Liston v. Keegan*, *supra*.

(b) *Yeap Cheah Neo v. Ong Cheng Neo*, L. R. 6 P. C. at p. 396.

(c) *Post*, p. 35, and cases there cited.

(d) See *post*, p. 124, and cases there cited.

(e) See *post*, p. 139.

(f) *West v. Shuttleworth*, 2 My. & K. 684; *Heath v. Chapman*, 2 Dr. 417; *Re Blundell's Trusts*, 30 Beav. 360.

(g) See *ante*, p. 22.

(h) Sect. 1. See this Act, *post*, Part III. of this Book.

ful trusts remaining subject to such trusts, and the part apportioned to the superstitious trusts being applied to lawful charitable trusts for the benefit of Roman Catholics; and the trusts may be ascertained from usage (i). This section does not, of course, apply where the fund is wholly given to superstitious uses (j).

Where a bequest for superstitious purposes fails, it falls into residue (k), or, if it is a gift of personalty, goes to the next of kin (l), or, if of realty, to the heir-at-law (m).

A limitation over in the event of a gift being void as contrary to public policy or superstitious is good (n).

Persons entitled on failure of superstitious gift.

Limitation over on superstitious gift good.

(i) Sect. 5, *post*.

(j) See *Re Blundell's Trusts*, 30 Beav. 360.

(k) *Heath v. Chapman*, 2 Dr. 417; *Re Blundell's Trusts*, 30 Beav. 360.

(l) *West v. Shuttleworth*, 2 My. & K. 684.

(m) *Croft v. Ewatts*, Moo. 784. With regard to land given to superstitious uses, it will be remembered that the statute 23 Hen. VIII. c. 10, *ante*, p. 18, which made superstitious uses void, did not give the lands affected by them to the king; and that the statute 1 Edw. VI. c. 14, *ante*, p. 18, although it gave the land affected by the superstitious use to the king, extended only to superstitious uses then existing. See per Holt, C. J., in *Rex v. Portington*, 12 Mod. 31. As to forfeitures to the Crown under 1 Edw. VI. c. 14, where the gifts to superstitious uses were made before the passing of that statute, see *Waldern v. Ward*, 2 Sid. 13, 14, 46; and *Att.-Gen. v.*

Fishmongers' Co., 5 My. & C. 11, 17. A decision contrary to *Croft v. Ewatts*, *supra*, was come to in *Rex v. Portington*, 1 Salk. 162, where the Court of Exchequer held that a superstitious devise (not also charitable) though void was not so far void as to result to the heir, and that therefore the king should order it to be applied to a proper use. But when the same matter afterwards came before Lord Holt, 3 Salk. 334, he is reported to have recommended the heir to seek relief "in Parliament," the words he really used having probably been "in equity." Having regard to *Croft v. Ewatts*, *supra*, the first decision in *Rex v. Portington* must be considered to be of doubtful authority.

(n) *De Themmines v. De Bonneval*, 5 Russ. 288. See also *Sibley v. Perry*, 7 Ves. 522; *Carter v. Green*, 3 K. & J. 591; *Warren v. Rudall*, 4 *ibid.* at p. 618, and n. (o) to sect. 4 of the Mortmain and Charit. Uses Act, 1888, *post*.

CHAPTER III.

GIFTS TO CHARITIES.

SECTION I.

STATUTORY RESTRICTIONS ON GIFTS TO CHARITY.

Statutory restrictions on assurances for charitable purposes.

Mortmain Acts and 9 Geo. II. c. 36.

Repealed by Mortmain and Charit. Uses Act, 1888.

THE assurance of certain kinds of property for charitable purposes is subject to various legislative restrictions.

These restrictions were formerly imposed by (1) the Mortmain Acts, properly so called; (2) the Statute of 9 Geo. II. c. 36, commonly, but inaccurately, called the Statute of Mortmain.

Both the Mortmain Acts and 9 Geo. II. c. 36 have been repealed by the Mortmain and Charitable Uses Act, 1888, which re-enacts their provisions in a consolidated form.

The provisions of the Mortmain Acts are comprised in Part I., and the provisions of 9 Geo. II. c. 36 in Part II., of the new enactment.

Dealt with by Part II. of Book.

The Mortmain and Charitable Uses Act, 1888, forms the subject of Part II. of this Book. In the notes to Part I. of that Act (being sects. 1, 2, and 3), and also in the introduction to the Act, the subject of mortmain is fully dealt with; and in the notes to sects. 4 and 5 will be found the numerous cases which have been decided upon the repealed statute 9 Geo. II. c. 36, all of which are still applicable. The different sections of 9 Geo. II. c. 36 will be found in note (a) to sect. 4 and note (a) to sect. 7 of the new Act.

Summarised here.

Under these circumstances a short summary of the statutory provisions is all that is required here.

Effect of Part I. of Mortmain and Charit. Uses Act, 1888 (Mortmain).

The effect of Part I. of the Mortmain and Charitable Uses Act, 1888 (substituted for the old Mortmain Acts), is to forbid the acquisition of land by corporations of any kind (including charitable corporations) except under a licence in mortmain. Exemptions from this prohibition have in many cases been created by special

statute, charter, and custom. These exemptions are preserved by sects. 6, 8, and 10 of the new Act.

Part II. of the Mortmain and Charitable Uses Act, 1888 (re-enacting the repealed Act 9 Geo. II. c. 36), forbids the assurance of land (*a*) (including tenements and hereditaments, corporeal and incorporeal, of whatsoever tenure, and any estate and interest in land (*b*)), and of personal estate to be laid out in the purchase of land for any charitable purpose whatever, unless the requirements of the Act are complied with; and any such assurance which does not satisfy those requirements is void (*c*).

Effect of Part II. (9 Geo. II. c. 36). Property to which it applies.

The requirements are as follows:—

The assurance must take effect in possession for the charitable use intended immediately from the making of it (*d*), and must be without any power of revocation, reservation, condition, or provision for the benefit of the assurator (*e*).

Requirements to be observed in assurances of land, &c. to charitable purposes.

A nominal rent, mines and minerals, and easements may, however, be reserved; so, also, covenants as to the erection and repair of buildings, the formation or repair of streets, drainage, nuisances, &c., and a right of entry for non-payment of rent or breach of covenant, and other similar stipulations may be inserted (*f*).

If the assurance is in good faith, and for full and valuable consideration, the consideration may consist wholly or partly of a rent, rent-charge, or other annual payment (*g*).

The assurance, unless of copyholds or stock in the public funds, must be by deed executed in the presence of at least two witnesses (*h*).

The assurance, unless made in good faith for full and valuable consideration, must be made at least twelve months before the death of the assurator, including the day of making the assurance and of the death (*i*); or, in the case of stock in the public funds, must be made by transfer at least six months before the death of the assurator, including the days of the transfer and of the death (*k*).

Except in the case of stock in the public funds, the assurance must be enrolled in the Central Office of the Supreme Court within six months, unless, in the case of an assurance of land, the charitable uses are declared by a separate instrument, in which case the separate instrument must be so enrolled within six months after the making of the assurance of the land (*l*).

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|--|------------------------------|
| (a) Sect. 4, sub-s. (1), <i>post</i> . | (f) <i>Ibid.</i> sub-s. (4). |
| (b) See the definition of land in sect. 10, <i>post</i> . | (g) <i>Ibid.</i> sub-s. (5). |
| (c) Mortmain and Charit. Uses Act, 1888, s. 4, sub-s. (1), <i>post</i> . | (h) <i>Ibid.</i> sub-s. (6). |
| (d) <i>Ibid.</i> sub-s. (2). | (i) <i>Ibid.</i> sub-s. (7). |
| (e) <i>Ibid.</i> sub-s. (3). | (k) <i>Ibid.</i> sub-s. (8). |
| | (l) <i>Ibid.</i> sub-s. (9). |

Gifts by will of property to which Act applies void.

The above-mentioned statutory requirements cannot be satisfied by will, and as the word "assurance" in the Act includes a will and codicil (*m*), the result is that property of the kinds to which the statute applies cannot be given by will to charitable purposes (*n*).

Exemptions.

The Act, however, contains exemptions in favour of certain institutions and customs (*o*). And the numerous exemptions to 9 Geo. II. c. 36, which had been created by various statutes are all preserved (*p*).

SECTION II.

GIFTS TO CHARITIES NOT WITHIN THE STATUTORY PROHIBITIONS.

Favour shown to Charities.

Favour shown to charities.

Gifts for charitable purposes not falling within the statutory prohibitions referred to in the last section, such as gifts of personal property, not being an interest in land and not directed to be laid out in the purchase of land, and gifts of all kinds of property in cases coming within the exemptions there referred to, were always regarded by the Court of Chancery with especial favour.

Bequests to charity upheld where ordinarily they would fail.

Thus dispositions by will in favour of charity are upheld in many cases in which, if treated according to the ordinary rules, they would fail (*q*).

Presumption in favour of construction which will make gift effectual.

And where a charitable bequest is capable of two constructions, one of which would make it void, and the other would make it effectual, the latter will be adopted by the Court (*r*).

(*m*) See sect. 10, *post*.

(*n*) See particularly note (*a*) to sect. 4 of the Mortmain and Charit. Uses Act, 1888, *post*.

(*o*) *Ibid.* sects. 6, 7, and 12, *post*.

(*p*) *Ibid.* sect. 8. The various exemptions are dealt with in the notes to that section.

(*q*) See *Bruce v. Presbytery of Deer*, L. R. 1 H. L. Sc. 96; *Magistrates of Dundee v. Morris*, 3 Macq. 134. The reason of the special favour shown to charities is said to have arisen from the fact that the rules of construction applied by the civil law have been followed in the case of bequests to charitable or public purposes: see Domat, book 4, tit. 2, s. vi. In *Moggridge v. Thackwell*, 7 Ves. at p. 69, Lord Eldon said, "In what the doctrine originated, whether, as supposed by

Lord Thurlow in *White v. White* (1 Bro. C. C. 12), in the principles of the civil law as applied to charities, or in the religious notions entertained formerly in this country, I know not; but we all know there was a period when, in this country, a portion of the residue of every man's estate was applied to charity; and the ordinary thought himself obliged so to apply it, upon the ground that there was a general principle of piety in the testator. When the statute (22 & 23 Car. II. c. 10), compelled a distribution, it is not impossible that the same favour should have been extended to charity in the construction of wills, by their own force purporting to authorize such a distribution."

(*r*) *Bruce v. Presbytery of Deer*, L. R. 1 H. L. Sc. 96.

General Charitable Intention.

The rule, in pursuance of which gifts for charitable purposes are supported where otherwise they would fail, is that where the donor has manifested an intention that a particular fund shall be devoted to charity, or, as it is commonly expressed, where he has shown a general charitable intention, that intention will be carried into effect, although he has specified no particular objects to which his bounty is to be directed, or although the particular objects which he has named are impracticable.

General charitable intention.

The mode in which in these cases the charitable intention is carried into effect forms the subject of Chap. V.

In accordance with the rule above mentioned, if the purposes named by the donor are such as the law holds to be charitable, it is no objection to their validity that they are expressed in the most vague and indefinite terms.

Indefinite gifts.

Thus bequests for charitable purposes generally (*s*), for charitable and deserving objects (*t*), or to be distributed in charity (*u*), or for general religious (*x*), or educational (*y*) purposes, are upheld. So, also, bequests to "the ward of Bread Street" (*z*), to certain named institutions "or to any other religious institution or purposes" the trustees might think proper (*a*), "for such charities and other public purposes as lawfully might be" in a particular parish (*b*), have been supported.

General charitable purposes.

So, also, a charitable gift to a class generally, no special objects being pointed out, is not allowed to fail.

Class.

Thus, gifts to the poor (*c*), for poor relations (*d*), or to the widows and children of seamen (*e*), or persons belonging to a particular trade (*f*), are none of them void for uncertainty.

(*s*) *Clifford v. Francis*, Freem. K.B. 330; *Att.-Gen. v. Herrick*, Amb. 712; *Paice v. Archbishop of Canterbury*, 14 Ves. 364.

(*t*) *Re Sutton*, *Stone v. Att.-Gen.*, 28 Ch. D. 464. But see *Harris v. Du Pasquier*, 20 W. R. 668, and *post*, p. 38.

(*u*) *Att.-Gen. v. Gleg*, 3 Atk. 356; *Lewis v. Allenby*, L. R. 10 Eq. 668.

(*x*) *Poucerscourt v. Poucerscourt*, 1 Mol. 616; *Bruce v. Presbytery of Deer*, L. R. 1 H. L. Sc. 96; *Re Lea*, *Lea v. Cooke*, 34 Ch. D. 528; and *ante*, p. 10.

(*y*) *Re Marmaduke Levitt*, 1 Times L. R. 578; and see *ante*, p. 5.

(*z*) *Baylis v. Att.-Gen.*, 2 Atk. 239.

(*a*) *Wilkinson v. Lindgren*, L. R. 5 Ch. 570; *Copinger v. Crehane*, 11 Ir. R. Eq. 429; *Pocock v. Att.-Gen.*, 3 Ch. D. 342. See, also, *ante*, p. 8.

(*b*) *Dolan v. Macdermot*, L. R. 3 Ch. 676. See also *Cook v. Duckenfield*, 2 Atk. 562; *Att.-Gen. v. Freeman*, Dan. 117. And distinguish *Morice v. Bishop of Durham*, 10 Ves. 522; and *Williams v. Kershaw*, 5 Cl. & F. 111, cited *post*, p. 37.

(*c*) *Att.-Gen. v. Matthews*, 2 Lev. 167; *Att.-Gen. v. Rance*, cited Amb. 422; *Att.-Gen. v. Wilkinson*, 1 Beav. 370; and see *ante*, p. 2.

(*d*) *White v. White*, 7 Ves. 423; *Att.-Gen. v. Price*, 17 Ves. 371; and see *ante*, p. 4.

(*e*) *Powell v. Att.-Gen.*, 3 Mer. 48; *Att.-Gen. v. Comber*, 2 S. & S. 93; *Thompson v. Corby*, 27 Beav. 649; and see *ante*, p. 3.

(*f*) *Re White's Trusts*, 33 Ch. D. 449; and see *ante*, p. 3.

Att.-Gen. v. Clarke.

In *Att.-Gen. v. Clarke* (e), where a gift for the poor inhabitants of a parish was upheld, the report of the judgment is as follows: "Sir Thomas Clarke, Master of the Rolls, gave his opinion in favour of the charity, and said that the Court has done so in many cases where the expressions were much more general and uncertain; that in those cases the Court forms a judgment upon taking all the circumstances into consideration, and inclines in favour of the disposition *ut res magis valeat*. In the case of *The Att.-Gen. v. Rance*, 18th July, 1728, a legacy was given to the poor. There were no words in the will which discovered what poor he meant; but it appearing that the testator was a French refugee, the Court directed the legacies to be given to the poor refugees. *The Att.-Gen. v. Brown*, 18th November, 1749, the words were very general; but his Honour did not mention them. The words in the present case are not so uncertain as in those cited. The word inhabitant bears a very general sense, and may extend to everybody living in the parish."

Particular purposes to be afterwards named.

Again, where there is a general intention in favour of charity, a bequest will be supported, although the donor intended particular charitable purposes to be specified, but that intention has not been carried out.

This is the case where a person bequeaths a legacy to such charitable purposes as he shall afterwards direct, and dies without leaving any direction (f).

Mills v. Farmer.

In *Mills v. Farmer* (g) a testator bequeathed the residue of his personal estate for certain specified charitable purposes "and other charitable purposes as I do intend to name hereafter." He afterwards made a codicil, but named no charitable purposes. It was held by Lord Eldon that there was a good charitable bequest to be carried into execution by the Court, having regard to the objects particularly pointed out by the testator.

"It is therefore no longer," said his Lordship (h), "to be contended that a disposition in favour of charity can be construed according to the rules which are applicable to individuals. This is the view to be taken of the case mentioned by Freeman (i), that where a testator gives to such charitable uses as he shall direct, and gives no

(e) Amb. 422.

(f) *Mills v. Farmer*, 1 Mer. 55; *Anon.*, Freem. 261; *Moggridge v. Thackwell*, 7 Ves. 36; *Ommanney v. Butcher*, T. & R. 270; *Mayor, &c. of Gloucester v. Wood*, 3 Hare, 131, 144; *Commissioners of Charitable Donations v. Sullivan*, 1 Dr. & W. 501. See, also, *Pocock v. Att.-Gen.*, 3 Ch. D. 342; *Gillan v. Gillan*, 1 L. R.

Ir. 114. The case is otherwise if the charitable intention expressed by the will is dropped by a codicil, or if there is nothing to show that the purposes to be afterwards named were intended to be charitable; *post*, p. 39.

(g) *Supra*.

(h) At pp. 101, 102.

(i) 2 Freem. K. B. 330.

direction, the Court will direct the uses to which it shall be applied. The case of 'one Jones,' which is there referred to, is not now to be found; but, if there is no express decision which has gone precisely the same length with the note in Freeman, it may safely be affirmed that neither is there any decision which has determined that the doctrine there laid down is not law; and it has certainly been cited as an authority in almost every case of a gift to charity that has come into question from those days to the present. . . . If the law be, that the nomination of the particular objects is only the mode, and the gift to charity the substance, of the testamentary disposition, and that the declaration of such a gift is substantially sufficient to give effect to the disposition; it is surely much less strong to say that, where the testator has himself expressed certain modes by which that effect may be given to it, it shall be carried into execution accordingly, than to say that, because he has expressed an intention of naming certain other modes in addition to those which he has named, and has not named those others, therefore his intention must fail altogether; than to say (in short) that, because he has contemplated a division in certain proportions which he has omitted to render certain, that uncertainty must operate to prevent his general intention, which is ascertained, from taking effect in any manner whatever. Would this be to decide according to the authority of established precedents? How can uncertainty as to the mode operate to defeat the intention, when the impossibility of a certain mode taking effect at all does not so operate?"

The case is the same where a testator makes a bequest to such charitable uses as his executor shall appoint, and afterwards revokes the appointment of the executor without appointing another (*j*), or the executor himself renounces probate (*k*), or where a testator makes a bequest to such charitable uses as A. shall appoint, and A. dies in his lifetime (*l*), or neglects or refuses to appoint (*m*), or where the instrument of appointment cannot be found (*n*). In all these cases the charitable intention will be carried into effect.

Where the objects were to be named by three executors, and one died, the other two were held capable of making the selection (*o*). But an executor who has renounced cannot do so (*p*),

To be named
by another.

Who can
select.

(*j*) *White v. White*, 1 Bro. C. C. 12.

(*k*) *Att.-Gen. v. Fletcher*, 5 L. J.

Ch. 75.

(*l*) *Moggridge v. Thackwell*, 1 Ves.

Jun. 464; 7 *ibid.* 36; 13 *ibid.* 416;

Att.-Gen. v. Hickman, 2 Eq. Ca. Abr.

193, fol. 14; *Walsh v. Gladstone*, 1 Ph.

290; *Att.-Gen. v. Gladstone*, 13 Sim. 7.

(*m*) *Att.-Gen. v. Boulbee*, 2 Ves. Jun.

380; 3 *ibid.* 220.

(*n*) *Att.-Gen. v. Syderfen*, 1 Vern. 224;

7 Ves. 43, n.

(*o*) *Att.-Gen. v. Gleg*, 1 Atk. 356.

(*p*) *Att.-Gen. v. Fletcher*, 5 L. J.

Ch. 75.

nor can trustees subsequently appointed (*p*), at least in the absence of an expressed intention to that effect.

Bequest for definite objects and charitable purposes in unascertained proportions.

Again, where a bequest is made for certain definite objects and for charitable purposes, in proportions to be fixed by trustees or other persons, the gift for charitable purposes will not fail, although the persons entrusted with the apportionment die without apportioning (*q*).

Where no part necessarily applied to charity.

The case is otherwise where it is not obligatory upon the trustees to apply any part of the fund to charitable purposes (*r*).

Trustees refusing to accept trust.

Nor will a gift for a charitable purpose be permitted to fail because the trustees refuse to accept it (*s*), or because it is made to a corporation which cannot take it (*t*).

Society.

In *Reeve v. Att.-Gen.* (*u*), there were bequests of stock to the "Society for bettering the Condition of the Poor," upon trust to apply the income in payment of house-rent of seven or more Welsh labourers, to be selected in a particular manner; and to the "Society for the Encouragement of Female Servants," upon trust to distribute the income among Welsh servants, to be selected in a certain manner. Both societies having disclaimed the trusts, it was held that the discretion of the trustees was not of the essence of the trust; but that, having been originally created for certain definite objects, it must be upheld.

College.

So, also, where there was a devise of land to a college of a university, and the college refused to accept it (*x*).

Foreign charity.

Where, however, the legacy was for a charitable purpose in a foreign country, and the government of the country refused it, it was held to have failed (*y*).

Neglect of trustees.

Nor will a trust be permitted to fail by reason of neglect on the part of the trustees to carry out the directions of the donor (*z*).

Object impossible to be carried out.

Again, if the general object of the donor is charity, the gift will not fail, although the object named is or has become impossible to be carried out (*a*).

(*p*) *Hibbard v. Lamb*, Amb. 309.

(*q*) *Doyley v. Att.-Gen.*, 4 Vin. Abr. 485, pl. 16; *Salisbury v. Denton*, 3 K. & J. 529. See *Att.-Gen. v. Downing*, Wilm. Notes, 24. In such cases the fund will be divided equally between the specified objects and the charity. See *post*, p. 145.

(*r*) *Down v. Worrall*, 1 My. & K. 561. See *post*, p. 39.

(*s*) *Reeve v. Att.-Gen.*, 3 Hare, 191; *Att.-Gen. v. Andrew*, 3 Ves. Jun. 633; *Denyer v. Druce*, Tambl. 32. And see *Att.-Gen. v. Fletcher*, 5 L. J. Ch. 75, where an executor intrusted with the nomination of the charitable objects renounced.

(*t*) *Incorporated Society v. Richards*, 1

Dr. & W. 258; *Att.-Gen. v. Flood*, Hayes & J., App. xxi.

(*u*) *Supra*. See also *Barclay v. Maskelyne*, 4 Jur. N. S. 1294, where the Colonial Secretary declined to act in the trusts.

(*x*) *Att.-Gen. v. Andrew*, 3 Ves. Jun. 633; *Denyer v. Druce*, Tambl. 32. As to colleges of universities being permitted to take land under a devise, see Mortmain and Charit. Uses Act, 1888, s. 7, *post*.

(*y*) *New v. Bonaker*, L. R. 4 Eq. 655.

(*z*) *Att.-Gen. v. Boulton*, 2 Ves. Jun. 380.

(*a*) *Att.-Gen. v. Oglander*, 3 Bro. C. C. 166; but see *Russell v. Kellett*, 3 Sm. & G. 264.

Thus, gifts for a hospital for lepers in England (*b*), for the redemption of British slaves in Turkey or Barbary (*c*), for the relief of persons imprisoned for debt after imprisonment for debt had been abolished (*d*), have not been permitted to fail. So, also, a devise to a college to buy advowsons, the college already possessing as many as the law permitted (*e*).

Where a school was founded for the education of the poor within a certain district, and the district was afterwards converted into a dock under a local Act of Parliament so that the objects of the charity failed, a scheme was directed for its administration *cy-près* (*f*).

In another case, an annual sum was to be remitted to a corporation to be applied towards converting the neighbouring infidels, and there ceased to be any such; it was held that the charity must be applied *de novo* and a scheme settled (*g*).

In *Incorporated Society v. Price* (*h*), a rent-charge was granted to a society, to be applied for the maintenance of a school intended to be erected. The school having been discontinued for want of funds, it was held that the general object of the grantor was charity, and that the gift did not fail. "Though," said Sugden, L. C. (*i*), "the consideration was the maintenance and support of this particular school, the general object of the grantor was charity. I feel no difficulty, therefore, in giving the relief asked; for the society submit to expend the amount of the grant in the support of a school in the neighbourhood as the Court shall direct."

Upon the same principle, a bequest to the trustees of a chapel "towards reduction of their debt on that chapel" was paid to the trustees, though the debt had long been paid off (*k*).

Similarly, a gift to establish a soup kitchen and cottage hospital in a certain parish in such manner as not to violate the Mortmain Acts, which failed because no land in mortmain could be found, was upheld on the ground that there was a general intention to benefit the sick and poor of the parish (*l*).

So, also, a gift is good though the class of objects named by the testator is not permanent (*m*). Temporary objects.

(*b*) *Att.-Gen. v. Hicks*, Highm. Mortm. p. 336; 3 Bro. C. C. 166, n.

(*c*) *Att.-Gen. v. Ironmongers' Co.*, 2 My. & K. 576.

(*d*) *Att.-Gen. v. Hankey*, L. R. 16 Eq. 140, n.; *Re Prison Charities*, *ibid.* 129; *Mayor of Lyons v. Adv.-Gen. of Bengal*, 1 App. Cas. 91.

(*e*) *Att.-Gen. v. Green*, 2 Bro. C. C. 492. As to the application of gifts of this kind *cy-près*, see *post*, pp. 161 *et seq.*

(*f*) *Att.-Gen. v. Glyn*, 12 Sim. 84. As to a gift to support the established church in Ireland, see *Re Thompson, Thompson v. Phillips*, Times, 22 March, 1889.

(*g*) *Att.-Gen. v. Mayor of London*, 3 Bro. C. C. 171.

(*h*) 1 J. & Lat. 498.

(*i*) At p. 500.

(*k*) *Bunting v. Marriott*, 19 Beav. 163.

(*l*) *Biscoe v. Jackson*, 35 Ch. D. 460.

(*m*) *Att.-Gen. v. Lawes*, 8 Hare, 32.

Charitable institution named as channel to effect charitable intention.

A gift to a charitable institution or society will, if a general charitable intention is shown, be supported in cases in which otherwise it would lapse. In order to produce this result, it must appear that the donor intended that in any event the fund should be devoted to charity, and that the particular institution was named merely as the channel by which that intention was to be effected (*n*).

Institution which never existed.

In this case, the gift will be supported although the particular institution named never existed (*o*).

In *Loscombe v. Wintringham* (*p*), there was a bequest to the governors of a society for the "increase and encouragement of good servants" towards carrying on the intents of the society. No such institution existed. It was held that the gift was for a charitable and public purpose, and that there was no special desire to favour any particular society.

Institution which has ceased to exist.

So, also, if the institution named, although formerly existing, has come to an end whether before or after the date of the will (*q*); as where there was a bequest to a school which ceased to exist, to be applied in giving instruction in specified subjects (*r*).

So, also, where the society, though in existence at the death of the testator, was dissolved before his assets were administered (*s*).

No institution answering description.

The same rule applies where no institution can be found answering to the description of that to which the legacy has been bequeathed (*t*).

Description applying to several institutions.

And, similarly, where the description given by the testator applies equally well to several institutions (*u*).

Thus, where a legacy was given to the Guernsey Hospital, and there were two hospitals in Guernsey, and the master reported that he could not ascertain which was intended, Leach, M. R., said: "Here the testator devotes a certain sum to a charitable purpose; but he has not so described the particular purpose that it can be ascertained. This part of his property, however, being devoted to charity, it is the duty of the Court to direct that it be so applied" (*x*).

Intention to benefit particular institution.

The case, as we shall see, is different where the intention of the testator is merely to benefit a particular institution, and not to

(*n*) See *Loscombe v. Wintringham*, 13 Beav. at p. 88; *Barclay v. Mackelyle*, 4 Jur. N. S. 1294; *Incorporated Society v. Richards*, 1 Dr. & W. at p. 294.

(*o*) *Re Maguire*, L. R. 9 Eq. 632.

(*p*) 13 Beav. 87.

(*q*) *Marsh v. Att.-Gen.*, 2 J. & H. 61.

(*r*) *Ibid.* See also *Re Charities of Joseph Evans*, 10 Ir. Ch. R. 271; *Incorporated Society v. Rose*, 3 Ir. Eq. R. 257; *Carbery v. Cox*, 3 Ir. Ch. R. 231.

(*s*) *Hayter v. Trego*, 5 Russ. 113.

(*t*) *Re Clergy Society*, 2 K. & J. 615.

(*u*) *Bennett v. Hayter*, 2 Beav. 81.

(*x*) *Simon v. Barber*, 5 Russ. 112;

Re Alekin's Trusts, L. R. 14 Eq. 230. As to the mode of division in such a case, see *post*, p. 145. The Court will, of course, endeavour to find out which institution was intended, and there being a latent ambiguity parol evidence will be admitted. See *post*, p. 106.

devote the fund generally to charity (*y*). For, except where the fund is intended in any event to be given to charity, a gift to a charitable institution which has expired is as much a lapse as a gift to an individual who has expired (*z*).

Where a testator, after manifesting an intention to give a certain sum for charitable purposes, leaves blanks for the names of the charities the bequest is good (*a*). Names of charities left blank.

In some cases a gift is supported, although the object specified is illegal, the Court laying hold of the charitable intention and applying the gift to some charitable purpose which is not illegal (*b*). Illegal object.

This has been the case where the gift has failed on the ground of being superstitious (*c*). Superstitious use.

A legacy for providing the inmates of a workhouse with porter, which was illegal under 4 & 5 Will. IV. c. 76 (*d*), was directed to be applied in providing them with tea, sugar, and the like (*e*). Legacy to provide porter for paupers.

And an inquiry may be directed whether a gift is legal or not (*f*). Inquiry whether gift legal.

Where a testator directed funds to be provided for certain charity-schools by accumulating his property, but fixed no time for the continuance of the accumulation, which must have necessarily exceeded the legal period, it was held that although, in consequence of the direction to accumulate being void, the particular mode in which the testator meant his bounty to be applied could not take effect, yet that as the personal estate was devoted to charitable purposes, the charitable intention ought to be carried into effect by means of a scheme (*g*). Accumulation beyond legal period.

Where the gift contravenes the Mortmain Statute (*h*), it cannot, of course, be carried into effect (*i*). Not gift void under Mortmain Act.

(*y*) *Post*, p. 40.

(*z*) *Fisk v. Att.-Gen.*, L. R. 4 Eq. at p. 528; *Re Ovey*, *Broadbent v. Barrow*, 29 Ch. D. at p. 564.

(*a*) *Pieschel v. Paris*, 2 S. & S. 384. Otherwise if the amount is left blank: *Hartshorne v. Nicholson*, 28 Beav. 58. See *post*, p. 42.

(*b*) Per Lord Eldon in *Moggridge v. Thackwell*, 7 Ves. at p. 75.

(*c*) *Da Costa v. De Pas*, Amb. 228; *Att.-Gen. v. Guise*, 2 Vern. 266; *De Garcin v. Lawson*, 4 Ves. 433, n.; *Cary v. Abbot*, 7 Ves. 490; *Att.-Gen. v. Poyer*, 1 Ball & B. 145; *De Themmines v. De Bonneval*, 5 Russ. 288; *Att.-Gen. v. Todd*, 1 Keen, 803; *Re Young*, 7 Ir. R.

Eq. 218. Since the passing of the Acts relaxing the law against superstitious uses, gifts which would now be held to be void as superstitious can seldom, if ever, be charitable. See *ante*, p. 24.

(*d*) Poor Law Amendment Act, 1834, sects. 92 and 93.

(*e*) *Att.-Gen. v. Fint*, 3 De G. & Sm. 704.

(*f*) *Russell v. Jackson*, 10 Hare, 204; *Thompson v. Thompson*, 1 Coll. at p. 394.

(*g*) *Martin v. Margham*, 14 Sim. 230.

(*h*) Formerly 9 Geo. II. c. 36, now Part II. of the Mortmain and Charit. Uses Act, 1888.

(*i*) *Post*, p. 142.

In what Cases Gift fails.

Property of definite or ascertainable amount must be given to charity.

In order that a gift may be supported under the rule that a general charitable intention will be effectuated (*l*), it must be of such a character that property, of definite or ascertainable amount, is devoted to purposes necessarily charitable within the meaning of the Statute of Elizabeth.

Indefinite purpose not charitable.

A gift for an indefinite purpose, which is not charitable within the meaning of the Statute of Elizabeth, will not, of course, be supported.

Private charity.

Thus, a gift to be distributed "in private charity," not being charitable, is too vague to be supported (*m*).

"There is no case," said Plumer, M. R. (*n*), "in which private charity has been made the subject of disposal in the Crown, or been acted upon by this Court. The charities recognized by this Court are public in their nature; they are such as the Court can see to the execution of. In this case the difference is obvious; if a party is to execute the purpose of this testator, he cannot give to public charities; the disposition must be confined to private charity. In what respect does private charity differ from benevolence? Assisting individuals in distress is private charity; but how can such a charity be executed by the Court or by the Crown? In all cases the general principle is, that the trust must be of such a tangible nature as that the Court can deal with it; when it is mixed up with general moral duty, it is not the subject of the jurisdiction of a Court of justice. Private charity is in its nature indefinite; how can it be controlled, how can it be carried into execution? As a general purpose of charity the object of this testator cannot be carried into execution; as a trust it is not sufficiently specific or definite. The sum in question must therefore go to the next of kin."

And in *Nash v. Morley* (*o*), it was said that the Court would only support trusts which it could itself execute, or in relation to which it could exercise control over the trustees.

General benevolence and liberality.

So, also, a gift to objects of general benevolence and liberality, which need not necessarily include any charitable object, will not be supported.

Morice v. Bishop of Durham.

In *Morice v. Bishop of Durham* (*p*), where the residuary personal

(*l*) See *ante*, p. 29.

(*m*) *Ommanney v. Butcher*, T. & R. 260; *Nash v. Morley*, 5 Beav. 177; see, however, *Re Sinclair's Trust*, 13 L. R. Ir. 150; *Waldo v. Caley*, 16 Ves. 206; *Kendall v. Granger*, 5 Beav. 300; and

ante, p. 16.

(*n*) *Ommanney v. Butcher*, *supra*, at p. 273.

(*o*) *Supra*; and see *Nightingale v. Goulbourn*, 2 Ph. 594.

(*p*) 9 Ves. 99.

estate was bequeathed to such "objects of benevolence and liberality" as the executors should approve, Grant, M. R., in giving judgment, said (q): "Supposing the uncertainty of the trust no objection to its validity, could it be contended to be an abuse of the trust to employ this fund upon objects which all mankind would allow to be objects of liberality and benevolence, though not to be said, in the language of this Court, to be objects also of charity? By what rule of construction could it be said, all objects of liberality and benevolence are excluded which do not fall within the Statute of Elizabeth? The question is, not whether he may not apply it upon purposes strictly charitable, but whether he is bound so to apply it? Here there is no specific purpose pointed out to which the residue is to be applied; the words 'charity' and 'charitable' do not occur: the words used are not synonymous: the trusts may be completely executed without bestowing any part of this residue upon purposes strictly charitable. The residue, therefore, cannot be said to be given to charitable purposes; and as the trust is too indefinite to be disposed of to any other purpose, it follows that the residue remains undisposed of, and must be distributed among the next of kin of the testatrix."

Similarly, a bequest for such benevolent, charitable, and religious purposes as the trustees should think most advantageous and beneficial, was held void for uncertainty (r). Here, also, it will be observed that it would have been no breach of trust if the trustees had applied no part of the fund to charity.

It may, however, appear upon the construction of the will that words which, taken alone, might be wide enough to include other than charitable objects, are to be cut down so as to include only purposes which the law holds to be charitable. In this case, of course, the whole bequest is charitable, and its indefinite character is consequently no objection to its validity. In determining this question of construction the will must first, according to the ordinary rule, be carefully considered for the purpose of ascertaining whether, according to its true construction, the gift is charitable or not, and that having been determined, the gift must be dealt with accordingly.

Benevolent,
charitable,
and religious
purposes.

Indefinite
words cut
down to mean
charitable
purposes.

(q) At pp. 405, 406. This decision was affirmed by Lord Eldon, 10 Ves. 522. See also *James v. Allen*, 3 Mer. 17; *Thomson v. Shakespeare*, John. 612; *Fowler v. Garlike*, 1 R. & M. 232; *Stubbs v. Sargson*, 2 Keen, 255; *Harris v. Du Pasquier*, 20 W. R. 668; *Budget v. Hulford*,

W. N. 1873, 175; and cf. *Re Sir Robert Peel's School at Tamworth*, L. R. 3 Ch. 543.

(r) *Williams v. Kershaw*, 5 Cl. & F. 111; and see *Re Sir Robert Peel's School at Tamworth*, L. R. 3 Ch. at pp. 549, 550.

Charities and other public purposes.

In *Dolan v. Macdermot* (s), a bequest of personalty "for such charities and other public purposes as lawfully might be in the parish of T.," was held a good charitable bequest, the latter words being considered to mean purposes *ejusdem generis* with the former, and therefore charitable, and to be intended to describe purposes held by the law to be charitable, but not within the popular meaning of the term.

Charitable and deserving objects.

So, also, a bequest for "charitable and deserving objects" has been held good on the ground that one class of objects only was intended, and that the word "charitable" governed the whole sentence (t). And a similar decision was arrived at where a bequest was to be divided among such "charities, societies, and institutions," as a specified person should determine (u).

Alternative gift.

Again, where a discretion is left to the executors to apply a bequest either to general charitable purposes, or to purposes of an uncertain and indefinite character not necessarily charitable, the bequest will not be supported. The reason is that in this case, also, it is not obligatory on the executors to apply any part of the gift to charity (x).

Charitable or other purposes.

Thus, where a fund is given for such charitable or other purposes as the trustees may think fit (y), or for charitable or benevolent purposes (z), or to be expended in "acts of hospitality or charity" (a), or to be disposed of either for charitable or public purposes, or to any person or persons as the executors should think fit (b), the charitable trust is too indefinite to be supported.

Similarly, a bequest to trustees to be applied for the relief of domestic distress, assisting indigent but deserving individuals, or encouraging undertakings of general utility, will fail (c). So, also, a bequest for "deserving literary men, or to meet expenses connected with my manuscript works" (d).

(s) L. R. 3 Ch. 676. In the Scotch case of *Miller v. Rowan*, 5 Cl. & F. 99, a trust for such "benevolent and charitable purposes" as the trustees should think right was upheld; and see also the Scotch cases of *Hill v. Burns*, 2 Wils. & S. 80, and *Crichton v. Grierson*, 3 *ibid.* 329.

(t) *Re Sutton, Stone v. Att.-Gen.*, 28 Ch. D. 464; see also *Jemmit v. Verril*, Amb. 585, n., and the observation of Lord Cottenham thereon in *Ellis v. Selby*, 1 My. & C. at p. 292.

(u) *Re Douglas, Obert v. Barrow*, 35 Ch. D. 472.

(x) *Vezey v. Jamson*, 1 S. & S. 69; *Ellis v. Selby*, 1 My. & C. 286; *Down v. Worrall*, 1 My. & K. 561; *Re Jarman's Estate, Leavers v. Clayton*, 8 Ch. D. 584; *Re Hewitt's Estate, Mayor, &c. of Gateshead v. Hudspeth*, 53 L. J. Ch. 132; *Re*

Woodgate, 2 Times L. R. 674; see also cases collected in note to *Loscombe v. Wintringham*, 13 Beav. 89.

(y) *Ellis v. Selby*, *supra*.

(z) *Re Jarman's Estate, Leavers v. Clayton*, *supra*; *Re Hewitt's Estate, Mayor, &c. of Gateshead v. Hudspeth*, *supra*; *Re Riland's Estate, Phillips v. Robinson*, W. N. 1881, 173; see also *Horde v. Earl of Suffolk*, 2 My. & K. 59, and the observations thereon of Lord Cottenham in *Ellis v. Selby*, 1 My. & C. at p. 293.

(a) *Re Hewitt's Estate, Mayor, &c. of Gateshead v. Hudspeth*, 53 L. J. Ch. 132.

(b) *Vezey v. Jamson*, 1 S. & S. 69; *Buckle v. Bristol*, 13 W. R. 68; *Harris v. Du Pasquier*, 20 W. R. 688.

(c) *Kendall v. Granger*, 5 Beav. 300.

(d) *Thompson v. Thompson*, 1 Coll. at p. 399.

In *Down v. Worrall*(e), a testator gave his residuary personal estate to trustees upon trust to settle such part as he might himself fail to appoint, at their discretion, either for pious and charitable purposes, or otherwise for the benefit of the testator's sister and her children. The testator made no appointment. The trustees applied part for the benefit of the testator's sister and her children, and part for charitable purposes, but left a sum of 500*l.* unapplied. It was held, that this 500*l.* was undisposed of, and went to the next of kin, on the ground that the trustees had a personal discretion as to the application of a fund, and had died without exercising that discretion.

Down v. Worrall.

The distinction was noticed by Wood, V.-C., in *Salisbury v. Denton*(f), where he said :—"It is one thing to direct a trustee to give a part of a fund to one set of objects, and the remainder to another; and it is a distinct thing to direct him to give 'either' to one set of objects 'or' to another. *Down v. Worrall* was a case of the latter description. There the trustees could give all to either of the objects. This is a case of the former description. Here the trustee was bound to give a part to each."

If a fund is given to such charitable uses as the donor shall afterwards name, and the charitable purpose is revoked or dropped by a subsequent instrument, the gift fails.

Charitable purpose revoked or dropped.

Thus, in *Wheeler v. Sheer*(g), the testator gave the residue of his personal estate to be employed for such charitable uses as by codicil he should appoint. By a codicil he directed that the residue should be applied to such uses and purposes as by any other codicil or codicils should be directed; but he did not name any charitable purposes. He made two subsequent codicils, but gave no direction with regard to the disposition of his personal estate. Lord King held the bequest void. Lord Eldon(h) explained the decision as proceeding on the ground that the charitable purpose being dropped by the codicil, and the general use and purpose only mentioned, there was something like a revocation of the will; the case being accordingly reduced precisely to what it would have been if by the will only general uses, intents, and purposes had been mentioned, and not charitable purposes.

Where legacies are given to persons, not beneficially, but for purposes to be subsequently named, and such purposes are not named and there is nothing in the will to show that they were

Charitable intention not presumed.

(e) 1 My. & K. 561.

(f) 3 K. & J. at p. 539; *ante*, p. 32.

(g) Mos. 288. As to cases in which the charitable purpose is not revoked,

but there is merely an omission to name the specific objects, see *ante*, p. 30.

(h) *Moggridge v. Thackwell*, 7 Ves. at p. 79.

intended to be charitable, the Court cannot presume a charitable intention. If, therefore, the legacies are too indefinite to take effect, except on the footing of their being charitable, they fail (*i*).

Aston v. Wood. In *Aston v. Wood* (*k*), there was a bequest to the trustees of a chapel, with a direction that the money should be appropriated according to statement appended. No statement was appended. It was held that the trustees could not take the gift beneficially; that a charitable intention could not be presumed; and that as the bequest was not charitable, it was too indefinite to be supported.

Fellows and demies of Magdalen College. A bequest "to the fellows and demies of Magdalen College, Oxford," was held void for uncertainty, it not being clear whether the gift was charitable, or whether it was for certain individuals (*l*).

Municipal corporation. And the mere fact that a gift is to a municipal corporation is not sufficient to show that it was intended to be for a charitable or public purpose (*m*).

Power not in nature of trust. Upon the same principle the Court will not exercise a mere power, not being also a trust, to trustees to continue the testator's charities or give any others they should think fit (*n*).

Intention to create charitable trust. The mere existence of an intention to devote property to charity, when that intention has not been carried into effect, is not sufficient to create a charitable trust.

Thus, money deposited by a testatrix in a bank in her own name, "for charitable purposes," was held to form part of her estate (*o*). And a mere promise by a testator in his lifetime to contribute to a charity is a *nudum pactum* and cannot be enforced (*p*).

Mortmain provisions must be satisfied. And where the case is one to which the mortmain provisions apply, the property cannot be impressed with a charitable trust unless the statutory provisions are satisfied (*q*).

Intention to benefit particular institution. Again, where no general charitable intention is shown, but merely a desire to benefit a specified institution, and by reason of the institution ceasing to exist the legacy cannot take effect, there is a lapse (*r*).

(*i*) *Mayor, &c. of Gloucester v. Wood*, 3 Hare, 131; *Buckle v. Bristow*, 13 W. R. 68; *Aston v. Wood*, L. R. 6 Eq. 419.

(*k*) *Supra*; and see *Corporation of Gloucester v. Osborn*, 1 H. L. C. 272; *Buckle v. Bristow*, 13 W. R. 68.

(*l*) *Att.-Gen. v. Sibthorp*, 2 R. & M. 107; see also *Hogan v. Byrne*, 13 Ir. C. L. R. 166, where a gift to monks named "Christian Brothers" was held void for uncertainty, there being no less than forty-two unincorporated establishments of such monks.

(*m*) *Corporation of Gloucester v. Osborn*,

1 H. L. C. at p. 285.

(*n*) *Coxe v. Basset*, 3 Ves. Jun. 155.

(*o*) *Sinnett v. Herbert*, L. R. 12 Eq. 201; *Girdlestone v. Creed*, 10 Hare, 481.

(*p*) *Re Hudson, Creed v. Henderson*, W. N. 1885, 100. The Statute of Frauds was also a complete answer to the claim, *ibid.*; cf. also, with regard to the application of the Statute of Frauds in the case of charities, *Addington v. Cann*, 3 Atk. 141.

(*q*) *Girdlestone v. Creed*, *supra*.

(*r*) *Clark v. Taylor*, 1 Dr. 642; *Langford v. Goutland*, 3 Giff. 617; *Risk*

In such a case a gift to a charity which has expired is as much a lapse as a gift to an individual who has expired (s), and it cannot be applied *cy-près* (t). Charity legacy may lapse.

The rule was thus laid down by Kindersley, V.-C., in *Clark v. Taylor* (u). Clark v. Taylor. "Now there is a distinction well settled by the authorities. There is one class of cases, in which there is a gift to a charity generally, indicative of a general charitable purpose, and pointing out the mode of carrying it into effect; if that mode fails, the Court says the general purpose of charity shall be carried out. There is another class, in which the testator shows an intention, not of general charity, but to give to some particular institution; and then if it fails, because there is no such institution; the gift does not go to charity generally: that distinction is clearly recognized; and it cannot be said that wherever a gift for any charitable purpose fails, it is nevertheless to go to charity."

Thus, a legacy to a hospital which had ceased to exist before the date of the will was held to have failed (v).

In a recent case a bequest was given for the benefit of a so-called society, for a charitable object, which was founded, managed, and maintained by the testatrix, and of which she was secretary, president, and treasurer. It was held that the society had no existence apart from the testatrix, and that the gift failed (w).

This principle has never been applied to a case where the institution named was one which had never existed (x), or where the description given by the testator was equally applicable to several institutions (y). In neither of these cases, however, can it be said that there could not have been an intention merely to benefit a particular institution; for the fact that the institution named is non-existent or cannot be ascertained, need show nothing more than error on the part of the testator. Not applied where no institution exists, or where there is misdescription.

So, also, if the intention of the donor is merely that a particular purpose shall be effected, and that purpose is impossible to be carried out, the gift will lapse. Intention to effect particular purpose.

Accordingly, where the testator's intention was merely that a particular church should be built, it was held that if and so far as

v. *Att.-Gen.*, L. R. 4 Eq. 521; *Makeoon v. Ardagh*, Ir. R. 10 Eq. 445; *Brownjohn v. Gale*, W. N. 1869, 133; *Re Ovey*, *Broadbent v. Barrow*, 29 Ch. D. 560; *Purday v. Johnson*, 5 Times L. R. 117. As to the cases in which a general charitable intention is shown, see *ante*, p. 34.

(s) *Fisk v. Att.-Gen.*, L. R. 4 Eq. at p. 528; *Re Ovey*, *Broadbent v. Barrow*, *supra*, at p. 564, per Pearson, J.

(t) *Re White's Trusts*, 33 Ch. D. 449.

(u) 1 Dr. at p. 644.

(v) *Re Ovey*, *Broadbent v. Barrow*, 29 Ch. D. 560; *Langford v. Gowland*, 3 Giff. 617.

(w) *Re Joy*, *Purday v. Johnson*, 60 L. T. N. S. 175.

(x) *Loscombe v. Wintringham*, 13 Beav. 37; *Re Maguire*, L. R. 9 Eq. 632.

(y) *Bennett v. Hayter*, 2 Beav. 81; *Re Clergy Society*, 2 K. & J. 615. See *ante*, p. 34.

that purpose failed, the gift could not be applied to any other charitable purpose (z).

Thus, a bequest for the purchase of a presentation to Christ's Hospital, which failed because it was insufficient in amount (a); bequests to erect almshouses, which failed because a site could not be procured (b), to continue a periodical, which ceased to be published shortly after the date of the will (c), to establish a charity in a foreign country, which failed because of the refusal of the Government of the country to accept it (d), have all been held to fail.

Charitable gift to be applied by person dying before testator.

Legacies to persons who died in the testator's lifetime, to be applied in their discretion to charitable purposes, were held to have lapsed (e).

Superstitious gift.

So, also, a gift which is void on the ground that it is superstitious lapses where no general charitable intention is shown (f).

Amount unascertainable.

Again, a gift for a purpose clearly charitable will not be supported if the amount is left uncertain, or cannot be ascertained (g).

Amounts left blank.

Thus, where blanks were left in a will for the amounts to be given to charity the gift failed (h). So, also, where a legacy of definite amount was given to increase till it amounted to [] for building a hospital and supporting [] boys (i).

Purposes partly illegal and partly valid.

In many cases it happens that a fund is given partly to satisfy a purpose which fails, either because though charitable it is, in consequence of a direction that it shall be laid out in the purchase of land, obnoxious to the Mortmain Act (k), or because, not being charitable, it is too indefinite or remote (l), and partly to a valid charitable purpose.

To be distinguished from cases where residue, after satisfying illegal purpose, is given to charity.

These are cases in which the donor has, in effect, divided the fund into two parts, and given one part for the invalid purpose and one part for charity.

(z) *Att.-Gen. v. Bishop of Oxford*, 1 Bro. C. C. 444, n.; cited 4 Ves. at p. 432; *Corbyn v. French*, 4 Ves. at p. 433; and see *Att.-Gen. v. Minshull*, 4 Ves. at p. 14; *Re Randell, Randell v. Dixon*, 38 Ch. D. 213.

(a) *Cherry v. Mott*, 1 My. & C. 123.

(b) *Re White's Trusts*, 33 Ch. D. 449.

(c) *Marsh v. Means*, 5 W. R. 815.

(d) *New v. Bonaker*, L. R. 4 Eq. 655; see also *Hoare v. Hoare*, 56 L. T. N. S. 147.

(e) *Chamberlayne v. Brockett*, 41 L. J. Ch. 789. See S. C. on appeal, L. R. 8 Ch. 206.

(f) *West v. Shuttleworth*, 2 My. & K. 684; *Re Blundell's Trusts*, 30 Beav. 360;

and see *Rex v. Portington*, 3 Salk. 334; *Croft v. Ewette*, Moo. 784; and *ante*, pp. 23 *seq.*

(g) *Chapman v. Brown*, 6 Ves. 404; *Att.-Gen. v. Hinzman*, 2 J. & W. 170; and other cases cited *infra*.

(h) *Hartshorne v. Nicholson*, 26 Beav. 58.

(i) *Ewen v. Bannerman*, 2 Dow. & C. 74.

(k) Formerly 9 Geo. II. c. 36; now Part II. of the Mortmain and Charitable Uses Act, 1888, *post*.

(l) See *Fowler v. Fowler*, 33 Beav. 616; *Re Vaughan, Vaughan v. Thomas*, 33 Ch. D. 187; and *post*, p. 45.

They must be distinguished from another class of cases, hereafter noticed (*m*), in which the residue remaining after satisfying the invalid purpose is given to the charity.

Where the fund is in effect divided into two parts, there is no gift to charity of the part intended to be devoted to the invalid purpose.

The rule in cases of this kind is that if the amount required to satisfy the illegal purpose is reasonably ascertainable, the gift of the other part to charity is good; for, the sum required for the illegal purpose being once ascertained and deducted, the amount applicable to the valid charitable purpose is rendered certain (*n*).

The founding of a hospital, which was, in fact, a school for 100 boys (*o*), the erection of a monument (*p*), or the repair of a tomb (*q*), have been held to be purposes sufficiently definite, the amounts required for them being reasonably ascertainable.

In such a case an inquiry will be directed as to the amount which would be required for the illegal purpose (*r*), or in a simple case the amount which would be so required can be determined by the affidavit of a competent person (*s*).

Or the fund may be divided between the different objects (*t*).

The extent to which the gift fails is the capital representing the annual amount necessary to satisfy the illegal purpose, treating it as invested in consols (*u*).

If, however, the amount required for the object which is illegal cannot be reasonably ascertained, the gift of the other part of the fund for the valid charitable purpose, being unascertainable, fails also (*x*).

In *Chapman v. Brown* (*y*), a testatrix bequeathed the residue of her estate to build or purchase a chapel, and 20% of any surplus

No gift to charity of part devoted to invalid purpose.

Amount required for illegal purpose reasonably ascertainable.

Invalid purpose, when sufficiently definite.

Inquiry as to amount required for illegal purpose.

Or fund may be divided equally.

How amount of capital failing ascertained.

Amount required for illegal purpose unascertainable.

Chapman v. Brown.

(*m*) *Post*, p. 45.

(*n*) *Mitford v. Reynolds*, 1 Ph. 185, 197; *Blandford v. Thackerell*, 2 Ves. Jun. 238; see *Chapman v. Brown*, 6 Ves. 404; *Cramp v. Playfoot*, 4 K. & J. 479; *Magistrates of Dundee v. Morris*, 3 Macq. 134, 159; *Hoare v. Osborne*, L. R. 1 Eq. 585; *Fisk v. Att.-Gen.*, L. R. 4 Eq. 521; *Re Birkett*, 9 Ch. D. at p. 579.

(*o*) *Magistrates of Dundee v. Morris*, 3 Macq. 134.

(*p*) *Mitford v. Reynolds*, 1 Ph. 185.

(*q*) *Fisk v. Att.-Gen.*, L. R. 4 Eq. 521; *Re Birkett*, 9 Ch. D. at p. 579; *Re Vaughan, Vaughan v. Thomas*, 33 Ch. D. 187.

(*r*) *Mitford v. Reynolds*, 1 Ph. at p. 199; *Chapman v. Brown*, 6 Ves. at p. 410; *Adnam v. Cole*, 6 Beav. 353; *Hoare v. Osborne*, L. R. 1 Eq. at pp. 588, 589;

Re Vaughan, Vaughan v. Thomas, 33 Ch. D. 187.

(*s*) *Re Vaughan, Vaughan v. Thomas*, *supra*.

(*t*) *Hoare v. Osborne*, L. R. 1 Eq. at pp. 588, 589. See *Doyley v. Doyley*, 7 Ves. 58, n.; and *Salisbury v. Denton*, 3 K. & J. 529; and *post*, p. 145.

(*u*) *Re Vaughan, Vaughan v. Thomas*, 33 Ch. D. 187.

(*x*) *Chapman v. Brown*, 6 Ves. 404; *Att.-Gen. v. Davies*, 9 Ves. 535; *Att.-Gen. v. Hinzman*, 2 J. & W. 270; *Limbrey v. Gurr*, 6 Madd. 151; *Cramp v. Playfoot*, 4 K. & J. at p. 482; *Peek v. Peek*, 17 W. R. 1059; *Re Taylor, Martin v. Freeman*, 58 L. T. N. S. 538. See *Att.-Gen. v. Parsons*, 8 Ves. 186.

(*y*) 6 Ves. 404.

which might remain for supporting a minister, and the rest of such surplus she directed to be laid out for such charitable uses as her executors should think proper. The first gift being void under 9 Geo. II. c. 36, the gift of the further surplus for charity generally was held to fail for uncertainty. "I have been," said Grant, M. R., "a good deal embarrassed as to the ultimate bequest of the residue, to be applied by the executors in general charitable purposes. Standing by itself, a bequest of a residue to be employed in such charitable purposes as the executors shall think proper is a good bequest; supposing it legal to do as the testatrix had directed, and a residue had been left after these purposes were answered, there would have been a good bequest of it; and therefore the question is, whether that ulterior bequest is to fail, because the prior bequest cannot take effect. If it could be reduced to any certainty, how much would have been employed by the executors for the other purposes, the residue ought to be employed under this last direction, viz., for charitable purposes generally. I have considered whether that can be ascertained by a reference to the Master, to see how much would have been sufficient for this chapel: but upon consideration it is quite impossible to give any direction, that would not be vague and indefinite to a degree almost ridiculous; an inquiry what they might have employed for building a chapel, without knowing what kind of a chapel; the testatrix having given no ground to ascertain what kind of a chapel: no locality. It is utterly impossible to frame any direction that would enable the Master to form any idea upon it. If she had even pointed out any particular place, that might have furnished some ground of inquiry as to what size would be sufficient for the congregation to be expected there; but this is so entirely indefinite, that it is quite uncertain, what the residue would have been; and therefore it is void for that uncertainty. She had no view to any residue but a residue to be constituted by actually building a chapel. She contemplated no residue but with reference to that. It is impossible to ascertain it in the only manner in which she meant it to be ascertained. It is impossible for the Court to apply it. Therefore the whole of this disposition is void."

*Cramp v.
Playfoot.*

So where land was devised for the purpose of erecting a school-room, and the testator gave to his executors the sum of 400*l.* upon trust to expend the same, or such part thereof as might be necessary, in the erection of a school-room; and in case any part should not be so expended, the same was to be laid out in repairing a chapel; it was held that the whole bequest was void, the executors not having any alternative, the first trust being express,

but to apply part at least of the 400*l.* in a manner forbidden by the statute; and inasmuch as the whole of so small a sum might well have been employed in building a school, an inquiry how much would have been sufficient for that purpose, as suggested in *Chapman v. Brown*, would be useless (z).

In *Kirkmann v. Lewis* (a) the surplus which would remain after constructing a well and erecting a pump was considered to be unascertainable.

We now come to the second class of cases before referred to, in which the residue remaining, after satisfying a certain invalid object, is given to charity; or, which is the same thing, where the gift is in effect a gift of the whole to charity, subject to so much, if any, as may be required for satisfying the illegal purpose. In these cases no question as to ascertaining the amount required for the invalid purpose arises, for the result of the failure of that part of the gift is that the whole goes to the charity.

Residue, after satisfying illegal purpose, given to charity.

To this head belongs a series of cases in which a fund has been given to trustees upon trust to apply the income in keeping a tomb in repair, and as to the remainder of the income for valid charitable purposes.

In all these cases it has been held that the result of the failure of the trust for the repair of the tomb is, that the whole of the income becomes applicable for the charitable purpose (b).

The case of *Re Vaughan, Vaughan v. Thomas* (c), illustrates both principles. There the income of a fund was directed to be applied first in keeping a family vault in repair, and as to the residue in keeping in repair a tomb and a churchyard, the repair of the churchyard being a valid charitable object. It was held (1) that so much of the income as would have been required to keep in repair the family vault fell into residue; and (2) that as to so much of the residue as was required for the repair of the tomb the gift failed, and as to the rest was good.

Re Vaughan, Vaughan v. Thomas.

A charitable bequest, in itself valid, but dependent upon a previous invalid gift, fails also (d).

Bequest dependent on previous void gift.

(z) *Cramp v. Playfoot*, 4 K. & J. 479. See, also, *Cherry v. Mott*, 1 My. & C. at p. 133; *Re Birkett*, 9 Ch. D. at p. 579; and *Re Taylor, Martin v. Freeman*, 58 L. T. N. S. 538.

(a) 38 L. J. Ch. 570.

(b) *Fisk v. Att.-Gen.*, L. R. 4 Eq. 521; *Hunter v. Bullock*, L. R. 14 Eq. 45; *Dawson v. Small*, L. R. 18 Eq. 114; *Re Williams*, 5 Ch. D. 735; *Re Birkett*, 9 Ch. D. 576; *Re Vaughan, Vaughan v. Thomas*, 33 Ch. D. 187; contra, *Fowler*

v. Fowler, 33 Beav. 616. And see *Re Rigley's Trusts*, 36 L. J. Ch. at p. 149; *Hoare v. Osborne*, L. R. 1 Eq. 585.

(c) *Supra*.

(d) *Chapman v. Brown*, 6 Ves. 404; *Att.-Gen. v. Davies*, 9 Ves. 535; *Lim-brey v. Gurr*, 6 Madd. 151; *Price v. Hathaway*, 6 Madd. 304; *Att.-Gen. v. Goulding*, 2 Bro. C. C. 428; *Smith v. Oliver*, 11 Beav. 481; *Re Taylor, Martin v. Freeman*, 58 L. T. N. S. 538; cf. *Att.-Gen. v. Hodgson*, 15 Sim. 146.

Thus, where a bequest was made for building a chapel, which was void under 9 Geo. II. c. 36 (e), a direction to apply a portion of the surplus in providing a minister failed also (f).

Where a house was devised for a master of a school, and a sum of money bequeathed for providing a master, the devise being void the bequest also failed (g).

So where there is a bequest for the erection of a building, which fails, a bequest for its endowment cannot be supported (h).

Gift forming
part of
impracticable
scheme.

Prior valid
gift not
affected by
invalidity of
dependent
gift.

Revoked
legacies not
set up by
failure
of substituted
bequest.

Foreign
charity
disclaimed.

Legality of
foreign
charity de-
termined by
lex loci.

Inquiry as to
legality.

A gift valid in itself was held to fail because it formed part of a scheme which could not be carried into effect (i).

Where, on the contrary, the first gift is valid and the dependent gift invalid, the validity of the first is, of course, not affected (k).

Where a testator by a codicil revokes charitable legacies well given by will, and substitutes invalid charitable purposes, the legacies given by the will are not set up by the failure of those substituted by the codicil (l).

A gift necessarily fails where it is for the establishment of a charity in a foreign country, and the trustees named, being foreigners, disclaim the trusts; for in such a case the Court has no power to enforce the trust or to settle a scheme (m).

The question whether a specified charitable purpose is legal or not, is one which must be determined according to the laws of the country in which the trusts are to be carried into effect (n).

In one case an inquiry was directed as to the legality in Scotland of the purpose named by the testator (o).

Surplus Income.

Surplus
income.

It frequently happens that a donor has specifically named certain charitable objects which do not exhaust the whole income of the property, or that, although the whole income of the property was originally exhausted, there has been a subsequent increase.

In cases of this kind questions of some complexity arise as to who is entitled to the surplus.

Question of
construction.

The question is purely one of construction. "We must look at the instruments to be construed, and see whether, taking them

(e) Now Part II. of Mortmain and Charit. Uses Act, 1888, *post*.

(f) *Chapman v. Brown*, *supra*.

(g) *Att.-Gen. v. Hinzman*, 2 J. & W. 270; *Cramp v. Playfoot*, 4 K. & J. 479.

(h) *Green v. Britten*, 42 L. J. Ch. 187; *Att.-Gen. v. Whitchurch*, 3 Ves. Jun. 141; *Smith v. Oliver*, 11 Beav. 481; *Dunn v. Bournas*, 1 K. & J. 696; *Re Cox*, *Cox v. Davie*, 7 Ch. D. 204.

(i) *Grievs v. Case*, 4 Bro. C. C. 67.

(k) *Blandford v. Fackerell*, 4 Bro. C. C. 394; *Att.-Gen. v. Stepney*, 10 Ves. 22.

(l) *Tupper v. Tupper*, 1 K. & J. 665. Cf. *Quinn v. Butler*, L. R. 6 Eq. 225.

(m) *New v. Bonaker*, L. R. 4 Eq. 655; and see *post*, p. 127.

(n) *Ibid*.

(o) *Thompson v. Thompson*, 1 Coll. 381. Cf. *Russell v. Jackson*, 10 Hare, at p. 215.

altogether, we discover an intention on the part of the donors that the rents should be divided in certain proportions, and given to the different objects of the bounty of the donors in those proportions, or whether the intention manifested is, that specified sums should be permanently paid to particular objects of the bounty of the donors, and that they should be entitled to nothing more than the payment of these specified sums, without abatement and without augmentation" (p).

The rule is, that if the donor has manifested an intention that the whole of the income of the property shall be applied in charity, any subsequent increase in the amount of the income will also be so applicable, and no part of the original income or of the subsequent increase can be beneficially enjoyed by the donees in trust.

Intention to devote whole income to charity.

The mode in which the surplus income, when applicable to charity, is dealt with is treated of in Chapter VI.

There may, in the first place, be an express direction, as where the whole rents are given for a charitable purpose (q).

Gift of whole income.

Similarly, if the donor specifies certain charitable objects, and then disposes of the whole of the residue of the income for a charitable purpose (r).

In *Att.-Gen. v. Wax Chandlers' Co.* (s), property was devised to the company "for this intent and purpose, and upon this condition, that they shall yearly distribute eight pounds of lawful money of England after this manner;" specific objects were then named, exhausting the eight pounds; and the devise continued:—"And the rest of the profits of the said houses and tenements I will shall be bestowed upon the reparations of the said houses and tenements;" and it was held that, inasmuch as the whole of the income was dedicated to charity, any increase must be devoted to the same purpose.

Att.-Gen. v. Wax Chandlers' Co.

So, also, if, although the testator does not exhaust the whole income, he expressly states a desire to devote the whole to charity (t), or makes a general disposition of his property for charitable purposes (u), or otherwise manifests an intention to devote the whole

Intention expressed that whole shall go to charity.

(p) Per Lord Campbell in *Att.-Gen. v. Dean and Canons of Windsor*, 8 H. L. C. at pp. 393, 394; see also p. 406.
(q) *Kennington Hastings' Case*, Duke, 71.

(r) *Att.-Gen. v. Earl of Winchelsea*, 3 Bro. C. C. 373; *Att.-Gen. v. Hartley*, 4 Bro. C. C. 412; *Att.-Gen. v. Minshull*, 4 Ves. 11; *Att.-Gen. v. Solly*, 5 L. J. Ch. 5; *Att.-Gen. v. Caius College*, 2 Keen, 150; *Merchant Taylors' Co. v. Att.-Gen.*,

L. R. 6 Ch. 512; *Att.-Gen. v. Wax Chandlers' Co.*, L. R. 6 H. L. 1; cf. *University of Aberdeen v. Irvine*, L. R. 1 H. L., Sc. 289.

(s) L. R. 6 H. L. 1; see also *Merchant Taylors' Co. v. Att.-Gen.*, L. R. 6 Ch. 512.

(t) *Arnold v. Att.-Gen.*, Show. P. C. 22.

(u) *Att.-Gen. v. Sparks*, Amb. 200, *Att.-Gen. v. Haberdashers' Co.*, 4 Bro. C. C. 103; *S. C. nom. Att.-Gen. v. Tonna*, 2 Ves. Jun. 1.

to charity (*x*), the whole of any subsequent increase will be applicable to charity.

Att.-Gen. v. Earl of Winchelsea.

In *Att.-Gen. v. Earl of Winchelsea* (*y*) the testator gave the residue of his personal estate to trustees upon trust to pay 12*l.* a year to a schoolmaster for the children of a certain parish, 20*s.* for the purchase of books, and to apply any surplus income in clothing and putting out apprentices to any trade, business, or occupation, two children of the said parish and one of another parish. It was held that, the residue being more than adequate to the number of the objects of the charity, the surplus was applicable to similar purposes. "The question," said Arden, M. R., "is, whether the whole surplus of this personal estate is not intended to go to the charitable purposes mentioned in the will, though more than sufficient to answer the exact number of the objects there specified. The real intention of the testator is perfectly clear, that he meant to give the whole surplus." He then cited the cases of *Att.-Gen. v. Bishop of Oxford* (*z*), and *Att.-Gen. v. Goulding* (*a*), and proceeded:—"Wherever the intention has been to dispose of the whole property to certain purposes, as in the early case of *Thetford School* (*b*), and numerous subsequent authorities, the whole has been applied: the intention has been considered as such, and it has been only inferred that the testator has been mistaken as to the quantum. It has been observed as a strong mark of his intention, that by giving the apprentice fees to three objects, he has marked out the limits of his bounty, and that the confining it to that number will be a sufficient compliance with his intention; but, according to the disposition of this residue, his intention could not be limited to three boys; and if he would pay more, the testator has shown an intent that the surplus beyond that must be applied in the same manner; therefore I am of opinion it must be applied to the charitable purposes mentioned in the will; perhaps it may not turn out to be much more than sufficient, but if it should, the next of kin may then come to the Court, as in other cases, where there has been an increase of rents and profits."

Intentions presumed, where objects specified

Again, if the donor, without making any general declaration as to devoting the whole income to charity, nevertheless names specific charitable purposes which exhaust the whole income, that

(*x*) *Att.-Gen. v. Drapers' Co.*, 2 Beav. 508; *Ibid.*, 4 Beav. 67; *Att.-Gen. v. Christ's Hospital*, 4 Beav. 73; *Att.-Gen. v. Painters' Co.*, 2 Cox, 51; *Pieschel v. Paris*, 2 S. & S. 384; and see *Mayor of Southmolton v. Att.-Gen.*, 5 H. L. C. at p. 32; *Mayor of Beterley v. Att.-Gen.*,

6 H. L. C. at p. 319; *Att.-Gen. v. Dean and Canons of Windsor*, 8 H. L. C. 369.

(*y*) 3 Bro. C. C. 373.

(*z*) 1 Bro. C. C. 444, n.

(*a*) 2 Bro. C. C. 428.

(*b*) 8 Co. 130 b.

exhaustion indicates an intention to devote the whole to charity. In this case, also, therefore, any subsequent increase will go to charity. The *Thetford School Case* (c) is the leading authority for this proposition.

which exhaust income.

And the same result occurs where it appears that the donor thought he was disposing of the whole income (d).

Intention to exhaust income.
Surplus very small.

So, also, where the surplus undisposed of was insignificant, and there was a direction that the particular payments should abate proportionately in the event of depreciation of the property, the inference was that they were in like manner to share proportionately in any increase (e). But the difference between 66*l.* 13*s.* 4*d.* and 65*l.* 3*s.* 4*d.* was not considered to be insignificant, and the surplus revenues were held to belong to the donees beneficially (f).

The case is different where no intention of devoting the whole income to charity is manifested, and the particular charitable payments directed to be made, or the particular charitable purposes directed to be satisfied, do not exhaust the whole proceeds of the property.

No general charitable intention, and income not exhausted.

In this case the right of the charity is limited by the extent of the trust created in its favour (g). "If I give an estate to trustees, and take notice that the payments are less than the amount of the rents, no case has gone so far as to say, that the *cestui que trust*, even in the case of a charity, is entitled to the surplus" (h). And this will be so even though the specific payments directed to be made for the charity have become, by reason of the decrease in the value of money, insufficient to carry out the charitable intention of the donor (i).

Right of charity cannot be extended beyond trust.

Sometimes there is an express direction that the surplus is

Express gift of surplus.

(c) 8 Co. 130 b; and see *Inhabitants of Blitham v. Warreyn*, Duke, 67; *Sutton Coldfield Case*, Duke, 68; *Att.-Gen. v. Townsend*, Duke, 34; *Henshaw v. Corporation of Morpeth*, Duke, 69; *Lad v. London City*, Mos. 99; *Att.-Gen. v. Mayor of Coventry*, 2 Vern. 397; *Att.-Gen. v. Johnson*, Amb. 190; *Att.-Gen. v. Green*, 2 Bro. C. C. 492; *Att.-Gen. v. Coopers' Co.*, 19 Ves. 187; *Att.-Gen. v. Mayor of Bristol*, 2 J. & W. at p. 322; *Att.-Gen. v. Barham*, 4 L. J. Ch. 128; *Att.-Gen. v. Gilbert*, 10 Beav. 517; *Att.-Gen. v. Marchant*, L. R. 3 Eq. 424; see also *Att.-Gen. v. Brazenose College*, 2 Cl. & F. at p. 328; *Mayor of Southmorton v. Att.-Gen.*, 5 H. L. C. at p. 32; *Mayor of Beverley v. Att.-Gen.*, 6 H. L. C. 310; *Att.-Gen. v. Dean and Canons of Windsor*, 8 H. L. C. 369.

(d) *Att.-Gen. v. Wilson*, 3 My. & K. 362; *Att.-Gen. v. Marchant*, L. R. 3 Eq. 424.

(e) *Mercers' Co. v. Att.-Gen.*, 2 Bli. N. S. 165; in this case the surplus undisposed of was only 9*s.*

(f) *Att.-Gen. v. Brazenose College*, 2 Cl. & F. 295.

(g) *Att.-Gen. v. Cordwainers' Co.*, 3 My. & K. 534; *Att.-Gen. v. Liddell*, 19 W. R. 297.

(h) Per Lord Eldon in *Att.-Gen. v. Mayor of Bristol*, 2 J. & W. at pp. 307, 308; and see *Att.-Gen. v. Brazenose College*, 2 Cl. & F. at pp. 328, 329; *Att.-Gen. v. Skinners' Co.*, 2 Russ. at p. 435; *Att.-Gen. v. Smythies*, 2 R. & M. at pp. 740-742.

(i) *Att.-Gen. v. Gascoigne*, 2 My. & K. 647; *Commissioners of Charitable Donations v. Clifford*, 1 Dr. & W. 245.

to belong to the donees beneficially. Thus, in *Att.-Gen. v. Skinners' Co.* (*j*), property was vested in the company upon trust to maintain a grammar school, and the surplus was directed to go "to the use and behoof of the Skinners' Company to order and dispose of at their wills and pleasures."

In *Att.-Gen. v. Gascoigne* (*k*), the surplus rents were expressly given to the executors beneficially.

Gift subject to specified trusts, or upon specified conditions.

But it is not necessary that there should be any express direction as to the disposal of the surplus income.

It is sufficient if it appears from the construction of the instruments that the property was intended to be held subject only to the execution of certain charitable trusts or the performance of certain conditions in favour of charity.

"Generally speaking . . . it will be assumed that he (the donor) intended to confer a benefit upon the donee, in the enjoyment of any increase of the fund, should such gift be to the donee, subject to certain payments to others; secondly, if the gift be upon condition of making certain payments, subject to a forfeiture upon non-performance of the condition; or, thirdly, if the donee might be a loser by the insufficiency of the fund, which, indeed, is consequential upon the last" (*l*).

Specified trusts.

If then it appears that there is an absolute gift, subject only to certain trusts in favour of charity, any surplus belongs beneficially to the donees (*m*).

Thus, where property is conveyed to a college to the intent that they shall maintain certain scholars (*n*) or schools (*o*), or to a city company, or a municipal corporation, for certain charitable purposes not exhausting the income (*p*), or to a university, subject to certain payments (*q*), the donees are beneficially entitled to any surplus. So, also, where the gift was to the dean and canons of Windsor,

(*j*) 2 Russ. 407; *Re Jordeyn's Charity*, 1 My. & K. 416; *Mayor of Southmolton v. Att.-Gen.*, 5 H. L. C. 1; *Mayor of Beverley v. Att.-Gen.*, 6 H. L. C. 310; *Att.-Gen. v. Dean and Canons of Windsor*, 8 H. L. C. 369.

(*k*) 2 My. & K. 647.

(*l*) Per Lord Cottenham in *Jack v. Burnett*, 12 Cl. & F. at p. 828.

(*m*) *Att.-Gen. v. Mayor of Bristol*, 2 J. & W. 294; *Att.-Gen. v. Skinners' Co.*, 2 Russ. 407; *Re Jordon's Charity*, 5 Sim. 571; *Att.-Gen. v. Cordwainers' Co.*, 3 My. & K. 534; *Att.-Gen. v. Fishmongers' Co.*, 5 My. & C. 11; *Att.-Gen. v. Brazenose College*, 2 Cl. & F. 295; *Jack v. Burnett*, 12 Cl. & F. 812; *Mayor of Southmolton v. Att.-Gen.*, 5 H. L. C. 1; *Att.-Gen. v. Grocers' Co.*, 6 Beav.

526; *Att.-Gen. v. Jesus College, Oxford*, 29 Beav. 163; *Att.-Gen. v. Sidney Sussex College*, L. R. 4 Ch. 722; *Merchant Taylors' Co. v. Att.-Gen.*, L. R. 6 Ch. at p. 515; and see *Att.-Gen. v. Wax Chandlers' Co.*, L. R. 6 H. L. at p. 19.

(*n*) *Att.-Gen. v. St. John's Coll., Cambridge*, Coop. t. Brough. 394; *Att.-Gen. v. Brazenose College*, 2 Cl. & F. 595; see also *Att.-Gen. v. Sidney Sussex College*, 34 Beav. 654; *ibid.*, L. R. 4 Ch. 722.

(*o*) *Att.-Gen. v. Trinity Coll., Cambridge*, 24 Beav. 383.

(*p*) *Att.-Gen. v. Skinners' Co.*, 5 Sim. 596; *Att.-Gen. v. Grocers' Co.*, 6 Beav. 526; *Mayor of Beverley v. Att.-Gen.*, 6 H. L. C. 310.

(*q*) *Jack v. Burnett*, 12 Cl. & F. 812.

subject to making certain payments for the poor knights of Windsor and others (r).

In one case where charitable purposes were specified, and the surplus income was given for repairs, it was held that a proportionate part of the surplus belonged to the donees beneficially, subject to the duty of repairing (s).

In *Att.-Gen. v. Smythies* (t), a charitable corporation had been created by letters patent under the name of "The Master and Poor of the College or Hospital of King James," to consist of a master and five poor persons, each of the five poor persons to receive a specified sum yearly; and it was ordained that the revenue should be applied for the support of the master and poor of the hospital, and the repair of the buildings. It was held that there was a gift of the whole to the master and paupers, and that, the amount receivable by the latter being ascertained, the surplus must go to the former.

Surplus to master of charitable corporation absolutely.

And where necessary there will be an apportionment between the present master and the representatives of the late master (u).

Apportionment between late and present master. Explanation given by Lord Brougham.

The principle of this decision was thus explained by Lord Brougham (r): "If the gift is of the whole estate or fund to one, and another is to receive so much a year out of its rents and profits, that clearly gives the surplus to the first. Then, if the gift is to both, but so as one shall take yearly so much, is not this, in substance and effect, the same thing? The whole is given to both, not in fixed proportions, but with a certain amount to the one and the unascertained residue to the other. It is distributed, and their shares are ascertained, not by division but subtraction" (x).

It was held by Lord Eldon, in a case where the master and usher of a school of royal foundation were corporators, that as long as they remained so, and the visitor did not think proper to remove them, they must, in a court of justice, have the enjoyment of all the revenues which belonged to them by the same instrument that gave them the corporate character (y).

As a rule, however, surplus income exceeding a reasonable compensation for the duties performed will not be allowed to be

As a rule master not allowed to

(r) *Att.-Gen. v. Dean and Canons of Windsor*, 8 H. L. C. 369.

(s) *Att.-Gen. v. Coopers' Co.*, 3 Beav. 29; but see the observations of Lord Cranworth in *Mayor of Beverley v. Att.-Gen.*, 6 H. L. C. at p. 324.

(t) 2 R. & M. 717; and cf. *Re Ashton's Charity*, 27 Beav. 115; *Att.-Gen. v. Wyggeston's Hospital*, 12 Beav. 113.

(u) *Att.-Gen. v. Smythies*, 16 Beav. 385.

(v) *Att.-Gen. v. Smythies*, 2 R. & M. at p. 741.

(x) *Ibid.* But the master was held not entitled to proceeds of sale of materials of buildings erected under a lease on land belonging to the charity, on the ground that they were part of the corpus of the charity estate.

(y) *Ex parte Berkhamstead Free School*, 2 V. & B. 134, 144.

enjoy surplus income. enjoyed by the master for his own benefit. Thus, in *Att.-Gen. v. Master of Brentwood School* (z), where the endowment of a grammar school was vested in the master and wardens as a corporation, the master was held not entitled to the surplus income.

Charitable corporation donee. That the donee takes the surplus beneficially is a result more readily accepted when it is itself a charitable corporation, as, for instance, a college (a), or a corporation existing for the public benefit, as a municipal corporation (b). And it has been pointed out that there is a great difference in this respect between a charitable and a trading corporation, because it is consistent with a charitable intention on the part of the donor that a charitable corporation should take the surplus beneficially (c). In these cases the mere fact of there being a surplus points to an intention to benefit the donee (d).

Gift subject to condition in favour of charity. In other cases property is given subject only to the performance of certain conditions in favour of charity. In such a case, of course, the land is the land of the donee, and every accretion to the value of the land belongs to the donee, and the charity has a right to receive nothing more than the benefit of the condition (e).

In these cases there is this circumstance also present, that "if the devise is accepted the conditions must be fulfilled, and the money must be paid, whether the land devised is, or is not, adequate to make the payment" (f).

Acceptance of obligation. And in any case where the donees have undertaken obligations to make payments to charity, as where they have entered into covenants and subjected themselves to liabilities which remain binding, whether the rents of the property increase or decrease, that is inconsistent with the notion of their taking the property merely as trustees (g).

Gift expressed to be on condition for A beneficial gift upon condition only of satisfying a charitable purpose must be distinguished from cases where, although the gift

(z) 1 My. & K. 376; S. C. nom. *Att.-Gen. v. Tufnell*, 12 Beav. 35; *Att.-Gen. v. Governors of Atherstone School*, 3 My. & K. at p. 555.

(a) *Att.-Gen. v. Catherine Hall*, Jac. 381.

(b) *Att.-Gen. v. Mayor of Bristol*, 2 J. & W. 294; *Mayor, &c. of Southmolton v. Att.-Gen.*, 5 H. L. C. at p. 12.

(c) *Att.-Gen. v. Mayor of Bristol*, *supra*; *Att.-Gen. v. Trinity Coll., Cambridge*, 24 Beav. at p. 399. See *Att.-Gen. v. Dean and Canons of Windsor*, 8 H. L. C. at p. 406. As to division where the corporation is itself one of the charitable objects, see *post*, p. 137.

(d) *Att.-Gen. v. Trinity Coll. Cambridge*, *supra*.

(e) *Att.-Gen. v. Christ's Hospital*, 1 R. & M. 626; *Jack v. Burnett*, 12 Cl. & F. 812; *Att.-Gen. v. Wax Chandlers' Co.*, L. R. 6 H. L. at p. 19, per Lord Cairns; and see *Att.-Gen. v. Dean and Canons of Windsor*, 8 H. L. C. at p. 452; *Re Richardson, Shuldham v. Royal National Lifeboat Institution*, 56 L. J. Ch. 784.

(f) Per Lord Cairns in *Att.-Gen. v. Wax Chandlers' Co.*, L. R. 6 H. L. at p. 19. See *Att.-Gen. v. Dean and Canons of Windsor*, 8 H. L. C. at p. 452; *Att.-Gen. v. Christ's Hospital*, 1 R. & M. 626; *Jack v. Burnett*, 12 Cl. & F. 812.

(g) *Att.-Gen. v. Mayor of Bristol*, 2 J. & W. at p. 303; *Jack v. Burnett*, *supra*. See *Att.-Gen. v. Merchant Venturers' Society*, 5 Beav. 338.

is expressed to be "for the intent and purpose and upon condition" that certain specified payments shall be made, yet, nevertheless, the whole of the income is devoted to the charitable purpose. These cases come within the principle of the *Thetford School Case* (h), and any increase in income is applicable for the charity (i).

Usage for 350 years has been held to show almost conclusively that property is held by a corporation upon a charitable trust and not beneficially (k). And the Court will assume that long possession is founded on a good title (l).

And a power to frame statutes and ordinances for the regulation of the charity property implies that the donees of the power do not take beneficially (m).

If the surplus is undisposed of, the donor or his representatives take it by way of resulting trust (n).

charity, but whole income exhausted.

Usage.

Power to frame ordinances.

Resulting trust.

Postponed Application, Conditional Gift, &c.

Where there is an immediate gift for charitable purposes, it is not rendered invalid by the fact that the particular application directed cannot immediately take effect (o), or will not of necessity take effect within any assignable limit of time, and may never take effect at all (p).

In *Att.-Gen. v. Bishop of Chester* (q) a legacy was bequeathed to trustees for the purpose of establishing a bishop in his Majesty's dominions in America. It was contended that as there was no bishop of America, and no probability of there ever being one, the legacy was void. But Lord Thurlow directed the money to remain in Court until it should be seen whether such an appointment would be made (r).

So, also, where there was a gift for the erection and endowment

Postponed application.

Att.-Gen. v. Bishop of Chester.

Endowment

(h) *Ante*, p. 49.

(i) *Att.-Gen. v. Wax Chandlers' Co.*, L. R. 6 H. L. 1; *Merchant Taylors' Co. v. Att.-Gen.*, L. R. 6 Ch. 512.

(k) *Att.-Gen. v. Mercers' Co.*, 18 W. R. 448. See also *Att.-Gen. v. Mayor of Bristol*, 2 J. & W. 294.

(l) See *Goodman v. Mayor of Saltash*, 7 App. Cas. 633. And see further, *post*, p. 110.

(m) *Att.-Gen. v. Mercers' Co.*, *supra*.

(n) *Att.-Gen. v. Mayor of Bristol*, 2 J. & W. at pp. 307, 308; *Att.-Gen. v. Dean and Canons of Windsor*, 24 Beav. 679; and see *Re Douglas, Obert v. Barrow*, 35 Ch. D. at p. 483.

(o) *Chamberlayne v. Brockett*, L. R. 8

Ch. 206.

(p) *Att.-Gen. v. Bishop of Chester*, 1 Bro. C. C. 444; *Att.-Gen. v. Oglander*, 3 *ibid.* 166; *Att.-Gen. v. Lady Downing*, Amb. 671; *Att.-Gen. v. Bowyer*, 3 Ves. Jun. 714; *Henshaw v. Atkinson*, 3 Madd. 306; *Att.-Gen. v. Earl of Craven*, 21 Beav. 392; *Philpott v. St. George's Hospital*, 6 H. L. O. 338; and distinguish *Re White's Trusts*, 33 Ch. D. 449.

(q) *Supra*. See also *Society for Propagation of the Gospel v. Att.-Gen.*, 3 Russ. 142.

(r) Ultimately a bishop of Canada was appointed, and the legacy then became applicable.

- of future church, &c. of a future church (*s*), or for the erection of almshouses when land should have been provided as therein mentioned (*t*), or to establish an institution as soon as a charter could be obtained (*u*).
- Inquiry. In such cases an inquiry will be directed whether the fund can be employed for the objects named (*x*).
- Fund not retained indefinitely. A fund will not be retained indefinitely awaiting the possibility of its being applied to a specific object (*y*).
- Intermediate income. In such cases the intermediate income is of course applicable to the charitable purpose, and there can be no resulting trust in respect of it (*z*), and the arrears will be allowed to accumulate (*a*).
- Conditional gift. These cases must be distinguished from those where the charity is itself conditional; for there may be a conditional legacy for a charity as well as for any other purpose (*b*). In that case, if the condition is never fulfilled, the estate never arises, and the intermediate income, if not disposed of, is not applicable to charity (*c*).
- Cherry v. Mott*. In *Cherry v. Mott* (*d*) a testator directed a presentation to Christ's Hospital to be purchased if his personal estate should be sufficient. The personal estate was insufficient. It was held that the legacy was conditional, and that the personal estate being insufficient there was no gift.
- Charitable trust for limited period. A charitable trust may be created only for a limited time. Where this is so, then, at the expiration of such time, the fund will be paid over to the person who created the trust, or his representatives (*e*), or to the persons entitled in remainder; for there can, of course, be no *cy-près* application beyond the limit of the charitable trust (*f*).

Secret Trusts.

- Secret trusts. Secret trusts in favour of charity are enforced, unless made for the purpose of evading the mortmain provisions (*g*).

(*s*) *Sinnett v. Herbert*, L. R. 7 Ch. 232. See also *post*, p. 140.

(*t*) *Chamberlayne v. Brockett*, L. R. 8 Ch. 206; *Re White's Trusts*, 33 Ch. D. 449.

(*u*) *Abbott v. Fraser*, L. R. 6 P. C. 96. In these cases, of course, no question of remoteness can arise: *Chamberlayne v. Brockett*, *supra*. See *post*, p. 56.

(*x*) *Sinnett v. Herbert* and *Chamberlayne v. Brockett*, *supra*.

(*y*) *Sinnett v. Herbert*, *supra*, at p. 241; and see *Re White's Trusts*, 33 Ch. D. 449.

(*z*) *Att.-Gen. v. Bowyer*, 3 Ves. Jun. at p. 726; *Att.-Gen. v. Oglander*, 3 Bro. C. C. 166; *Abbott v. Fraser*, L. R. 6 P. C. 96; *Chamberlayne v. Brockett*, *supra*.

(*a*) *Att.-Gen. v. Bolton*, 3 Anst. 820.

(*b*) *Cherry v. Mott*, 1 My. & C. at p. 132;

Chamberlayne v. Brockett, L. R. 8 Ch. at p. 211; *Thomas v. Howell*, L. R. 18 Eq. 198; *Re Tunno, Raikes v. Raikes*, W. N. 1886, 154; *Re Roberts, Repington v. Roberts-Gawen*, 19 Ch. D. 520; and see *Att.-Gen. v. Molland*, 1 You. 562; *Robinson v. Wood*, 27 L. J. Ch. 726.

(*c*) *Att.-Gen. v. Earl of Craven*, 21 Beav. 392.

(*d*) 1 My. & C. 123. Cf. *Yates v. University College, London*, L. R. 7 H. L. 438.

(*e*) *Att.-Gen. v. Pyle*, 1 Atk. 435; *Walsh v. Secretary of State for India*, 10 H. L. C. 367; and see *Re Sir Robert Peel's School at Tamworth*, L. R. 3 Ch. 543.

(*f*) *Re Randell, Randell v. Dixon*, 38 Ch. D. 213.

(*g*) See note (*e*) to sect. 4 of the Mortmain and Charit. Uses Act, 1888, *post*.

"Where a person, knowing that a testator in making a disposition in his favour intends it to be applied for purposes other than his own benefit, either expressly promises, or by silence implies, that he will carry the testator's intention into effect, and the property is left to him upon the faith of that promise or undertaking, it is, in effect, a case of trust; and in such case the Court will not allow the devisee to set up the Statute of Frauds, or rather, the Statute of Wills, by which the Statute of Frauds is now, in this respect, superseded" (*h*). In such a case, therefore, the donee being affected with a trust cannot take beneficially.

Creation and effect.

In order that a secret trust may be attached to a gift it must be shown to have been communicated to the donee, and expressly or tacitly accepted by him (*i*).

Communication and acceptance necessary.

If the testator communicates his wishes to the donee, and the donee acquiesces in them, that will amount to an acceptance (*k*).

Tacit acceptance.

But a mere wish or expectation on the part of the testator, even though expressed in writing, is not sufficient if it was not communicated to and accepted by the donee (*l*).

Uncommunicated wish.

The onus of proof is upon those who seek to establish the trust (*m*). And if no secret trust is either admitted or proved the donee takes the gift beneficially (*n*).

Onus of proof

Where the gift is to several donees as tenants in common, and a secret charitable trust is communicated to and accepted by one, the shares of the other tenants in common are not affected by it (*o*).

Acceptance by one of several tenants in common.

A distinction, however, is drawn between a gift made on the faith of a promise and a secret trust subsequently communicated, that is, a gift followed by a subsequent promise.

Gift on faith of, and gift followed by, promise.

"If, on the faith of a promise by A., a gift is made in favour of A. and B., the promise is fastened on to the gift to both; for B. cannot profit by A.'s fraud. But if the will is first made in favour of A. and B., and the secret trust is then communicated

(*h*) *Per Wood, V.-C. in Wallgrave v. Tebbs*, 2 K. & J. at p. 321. See *Jones v. Badley*, L. R. 3 Ch. at pp. 363, 364; *Russell v. Jackson*, 10 Hare, 204; *Atkinson v. Webster*, L. R. 20 Eq. 483.

(*i*) *Jones v. Badley*, L. R. 3 Ch. at p. 364; *Juniper v. Batchellor*, 19 L. T. N. S. 200; *Russell v. Jackson*, 10 Hare, 204; *Springett v. Jennings*, L. R. 10 Eq. 488.

(*k*) *Tee v. Ferris*, 2 K. & J. 357; *Rowbotham v. Dunnell*, 8 Ch. D. at p. 437.

(*l*) *Rowbotham v. Dunnell*, *supra*; *Lomax v. Ripley*, 3 Sm. & G. 48; *Moss v. Cooper*, 1 J. & H. 352; *Wallgrave v. Tebbs*, 2 K. & J. 313; *Carter v. Green*, 3

K. & J. 591; *Littledale v. Bickersteth*, 24 W. R. 507; *McCormick v. Grogan*, L. R. 4 H. L. 82; *Scott v. Brownrigg*, 9 L. R. Ir. 246.

(*m*) *Jones v. Badley*, L. R. 3 Ch. at p. 364; and see *Paine v. Hall*, 18 Ves. 475; *Carter v. Green*, *supra*.

(*n*) *Addington v. Cann*, 3 Atk. 141; *Paine v. Hall*, *supra*; *Jones v. Badley*, *supra*; *Lomax v. Ripley*, *supra*; *Littledale v. Bickersteth*, *supra*; *McCormick v. Grogan*, *supra*; *Re Downing's Residuary Estate*, 60 L. T. N. S. 140.

(*o*) *Tee v. Ferris*, 2 K. & J. 357; *Rowbotham v. Dunnell*, 8 Ch. D. 430.

only to A., the gift will be fixed with a trust with respect to A., but not so as regards B." (*p*).

This, however, is the only difference between the case of a trust subsequently communicated and a gift on the faith of a promise to carry out a charitable trust (*q*).

Acceptance
by one of
several joint
tenants.

It is said that if the gift is to persons as joint tenants, a subsequent communication to one of them affects the others with the trust. This, however, is a point which the authorities leave in doubt (*r*).

Remoteness.

Rule against
perpetuities
does not apply
to charities.

The rule against perpetuities does not apply to charitable trusts (*s*). It is, therefore, no objection to such a trust that it is intended to have a perpetual or indefinite continuance.

Postponed
application.

Where there is an immediate effectual gift to charity, no question of remoteness can arise, although the particular object will not necessarily take effect within any assignable limit of time, and may never take effect at all (*t*).

Conditional
gift.

Where, however, the gift to charity is not immediate but conditional upon the happening of some event, the estate does not arise unless the condition is fulfilled (*u*). In that case, the charitable gift must take effect within the limit allowed by the rule against perpetuities, and if it may, by any possibility, exceed that limit, it is void *ab initio* (*v*).

Gift over.

Similarly, a gift over may be too remote. Where the surplus rents of real estate were directed to be applied for the benefit of the members for the time being of certain families, but if the families failed to satisfy certain conditions, or became extinct, then for the benefit of certain charities, it was held that the gift over to charity was too remote (*x*).

Gift over
from another
charity.

If, however, the gift to the charity arises upon a contingent limitation over from another charity, remoteness is no objection (*y*).

Charity
cannot create
perpetuity
for objects not
charitable.

A charitable corporation cannot, however, create a perpetuity for purposes not charitable.

(*p*) Per Wood, V.-C., in *Moss v. Cooper*, 1 J. & H. at p. 367.

(*q*) *Ibid.*; *Addington v. Cann*, 3 Atk. at p. 152; *Russell v. Jackson*, 10 Hare, 204.

(*r*) *Roubootham v. Dunnett*, 8 Ch. D. at p. 437. See *Jones v. Badley*, L. R. 3 Eq. 362; *Russell v. Jackson*, 10 Hare, 204.

(*s*) *White v. White*, 7 Ves. 423; *Att.-Gen. v. Webster*, L. R. 20 Eq. 483.

(*t*) *Chamberlayne v. Brockett*, L. R. 8

Ch. at p. 211. See cases cited *ante*, p. 53.

(*u*) *Ante*, p. 54.

(*v*) *Chamberlayne v. Brockett*, *supra*; *Re White's Trusts*, 33 Ch. D. at p. 453; *Re Roberts, Revington v. Roberts-Gawen*, 19 Ch. D. 520.

(*x*) *Commissioners of Charitable Donations v. De Clifford*, 1 Dr. & W. 245.

(*y*) *Christ's Hospital v. Grainger*, Mac. & G. 460.

Thus, where by an indenture conveying lands to a municipal corporation for charitable purposes, the corporation covenanted that when a term of ninety-nine years in a farm, part of the hereditaments granted, should expire, they would, upon the request of any of the heirs of the body of a certain person, grant a new lease for thirty-one years. It was held that the covenant was invalid as creating a perpetuity (s). Perpetual lease.

So, also, where a testator gave all his property to certain colleges to be employed for specified charitable purposes, and directed that a lease of a specified part of his property should be granted at one-third part under true value to his "wife's kindred for ever, viz., brothers and sisters," it was held that the latter direction was no part of the charity, but an attempt to give a beneficial interest in perpetuity to persons who could not take it (a).

In order to have the benefit of the exemption from the rule against perpetuities, a trust must be charitable within the meaning which the law assigns to that term (b). Trusts designed to have a perpetual continuance can only be supported on the ground that they are charitable (c). Perpetual trusts void if not charitable.

Thus, a perpetual trust for the repair of a tomb, not forming part of the fabric of a church (d), or for any institution or objects not of a charitable character (e), is void.

It was held, in a case (f) relating to a bequest under the will of an inhabitant of the Straits Settlement, that the rule against perpetuities, depending upon the policy of the law and not upon statutes, must be considered as imported into the law of the Colony, together with the exception to that rule in the case of charitable uses. Similar rule in colonies.

A trust for accumulation in favour of a charity may not exceed the limit imposed by the Thellusson Act (g); and a charity is not, like an individual, entitled to have the accumulations stopped and the legacy paid at once (h). Accumulation.

(s) *Hope v. Corporation of Gloucester*, 7 De G. M. & G. 647.

(a) *Att.-Gen. v. Greenhill*, 33 Beav. 193; cf. *Att.-Gen. v. Catherine Hall, Cambridge*, Jac. 381; and *post*, p. 259.

(b) See Chap. I., *ante*.

(c) *White v. White*, 7 Ves. 423; *Rickard v. Robson*, 31 Beav. 244; *Thomson v. Shakespeare*, John. 612; *Carme v. Long*, 2 De G. F. & J. 75; *Att.-Gen. v. Webster*, L. R. 20 Eq. 483; *Re Dutton*, 4 Ex. D. 54; *Goodman v. Mayor of Saltash*, 7 App. Cas. at p. 642; *Re St. Stephen, Coleman St.*, 39 Ch. D. at p. 501. See Chap. I., *ante*.

(d) *Rickard v. Robson*, 31 Beav. 244;

Gravenor v. Hallum, Amb. 643; *Doe v. Pitcher*, 3 M. & S. 407; *Lloyd v. Lloyd*, 2 Sim. N. S. 255; *Fowler v. Fowler*, 33 Beav. 616.

(e) *Thomson v. Shakespeare*, John. 612; *Carme v. Long*, 2 De G. F. & J. 75; *Re Clark's Trust*, 1 Ch. D. 497; *Yeap Cheah Neo v. Ong Cheng Neo*, L. R. 6 P. C. 381; *Hoare v. Hoare*, 56 L. T. N. S. 147.

(f) *Yeap Cheah Neo v. Ong Cheng Neo*, L. R. 6 P. C. 381.

(g) *Martin v. Margham*, 14 Sim. 230; *Harbin v. Masterman*, L. R. 12 Eq. 559.

(h) *Harbin v. Masterman*, *supra*.

Defective Execution of Powers.

Defective
execution of
power aided.

After the passing of the Statute of Elizabeth (i), it became the habit of the Court of Chancery to supply all kinds of defective execution of powers in favour of charity, the Act being supposed to have been intended to cover all defects and omissions in point of form in instruments giving property to charity (j).

At the present day, in analogy to the ancient decisions, it has been held that the defective execution of a power ought to be made good. Thus, where a testatrix, having a general power of appointment, exercised it in favour of charity without pursuing the formalities required by the power, it was nevertheless held to be a good appointment (k).

An appointment to charitable uses must, however, comply with the provisions of the Mortmain and Charitable Uses Act, 1888 (l), and is expressly included in the definition of "assurance" (m).

SECTION III.

ADMINISTRATION OF ASSETS.

Assets not Marshalled in favour of Charity.

Assets not
marshalled in
favour of
charity.

Assets are not marshalled in favour of charity. Thus, if a testator give his real estate and personal estate (consisting of personalty savouring of realty, as leaseholds and mortgage securities, and also pure personalty) to trustees upon trust to sell and pay his debts and legacies, and bequeath the residue to a charity, equity will not marshal the assets by throwing the debts and ordinary legacies upon the proceeds of the real estate and the personalty savouring of realty, in order to leave the pure personalty for the charity (n).

(i) 43 Eliz. c. 4, now repealed by the Mortmain and Charit. Uses Act, 1888, *post*.

(j) With regard to the liberal construction which was placed by the Court of Chancery on this Act, see *Introd.* to Part II. of this Book, *post*.

(k) *Sayer v. Sayer*, 7 Hare, 377; *Innes v. Sayer*, 3 Mac. & G. 606.

(l) It must formerly have complied with 9 Geo. II. c. 36.

(m) Mortmain and Charit. Uses Act, 1888, s. 10, sub-s. (i), *post*.

(n) *Mogg v. Hodges*, 2 Ves. Sen. 52; *Foster v. Blagden*, Amb. 704; *Att.-Gen.*

v. Tyndall, *ibid.* 614; *Bishop of Peterborough v. Mortlock*, 1 Bro. C. C. 567; *Makeham v. Hooper*, 4 Bro. C. C. 153; *Tate v. Austin*, 1 P. Wms. 264; *Masters v. Masters*, *ibid.* 421; *Att.-Gen. v. Hudson*, *ibid.* 675; *Att.-Gen. v. Robins*, 2 P. Wms. at p. 25; *Fourdrin v. Goudey*, 3 My. & K. at p. 397; *Hobson v. Blackburn*, 1 Keen, 273; *Blann v. Bell*, 7 Ch. D. 382. There is no rule against marshalling in favour of charity known to Scotch law (*Macdonald v. Macdonald*, L. R. 14 Eq. 60), for the mortmain provisions do not apply to Scotland.

The rule of the Court in all such cases is to appropriate the fund as if no legal objection existed to applying any part of it to the charity legacies, and then to hold so much of the charity legacies to fail as would in that way be payable out of the prohibited fund (o).

Assets administered as though no gift to charity.

The result of this rule is that an apportionment is required for the purpose of ascertaining how much of the charitable gift falls upon the realty and impure personalty.

Apportionment;

The amount of apportionment required depends upon the construction of the will. Where real estate is made applicable to the general purposes of the will, as where realty and personalty are given as a mixed fund, and debts, expenses, and legacies are directed to be paid out of it, the apportionment is between the pure personalty on the one hand, and the impure personalty and the realty on the other (p).

between real and impure personalty, and pure personalty;

The mere fact, however, that real and personal estate are thrown together as a mixed fund is not of itself sufficient to throw debts, expenses, and costs upon them rateably. The rule of rateable payment does not extend beyond the things which the testator has expressly directed to be paid out of the mixed fund. Consequently, if the direction only extends to legacies, there is nothing to disturb the ordinary rule that debts are payable out of personalty (q). In such a case, therefore, the apportionment would, as regards legacies, be between pure personalty on the one hand and realty and impure personalty on the other hand, and, as regards debts, merely between pure and impure personalty.

If, on the other hand, the real estate is not made applicable rateably with the personal estate to debts, expenses, or legacies, the apportionment will be simply between the pure and impure personalty (r).

between pure and impure personalty.

In one case a small legacy left to the poor of several parishes was held to be distributable in doles at the funeral, and was allowed as part of the funeral expenses, and consequently did not abate (s).

Charitable legacy allowed among funeral expenses.

(o) *Williams v. Kershaw*, 1 Keen, 274, n.; *Fourdrin v. Goudley*, 3 My. & K. at p. 397; *Att.-Gen. v. Southgate*, 12 Sim. 77; *Johnson v. Woods*, 2 Beav. 409; see also *Howse v. Chapman*, 4 Ves. 542; *Currie v. Pye*, 17 Ves. at p. 467; *Crosbie v. Mayor of Liverpool*, 1 R. & M. 761, n.; *Jauncey v. Att.-Gen.*, 3 Giff. 308.

(p) *Robinson v. Governors of London Hospital*, 10 Hare, 19; see form of decree in *Williams v. Kershaw*, Set. 4th ed. pp. 689—691; *Briggs v. Chamberlain*, 18 Jur.

56; *Blann v. Bell*, 7 Ch. D. 382; and see *Elliott v. Dearsley*, 16 Ch. D. 322.

(q) *Elliott v. Dearsley*, 16 Ch. D. 322.

(r) See form of order in *Att.-Gen. v. Earl of Winchelsea*, 3 Bro. C. C. 373; Set. 4th ed. pp. 585, 586; followed in *Paice v. Archbishop of Canterbury*, 14 Ves. at p. 372; *Curtis v. Hutton*, *ibid.* 537; *Hopkinson v. Ellis*, 10 Beav. at pp. 175, 176; *Scott v. Forristall*, 10 W. R. 37.

(s) *Att.-Gen. v. Robins*, 2 P. Wms. at p. 25.

Time for ascertaining proportion in which bequest fails.

Failure of charitable intention by reason of abatement.

The proportion in which the bequest to the charity fails is ascertained according to the state and value of the assets at the testator's death, and not at the time of apportionment (*t*).

In one case, where the executors were directed to purchase a presentation to Christ's Hospital, the result of the rule against marshalling assets in favour of charity was that the bequest failed altogether, there not being sufficient money from the pure personalty alone to effect the purchase (*u*).

Marshalling directed by Testator.

Assets may be marshalled by testator.

But although a Court of Equity will not marshal assets in favour of charitable legacies, a testator may himself direct that his assets shall be marshalled, and the Court will give effect to his intention.

What is a direction to marshal.

Thus, he may bequeath charitable legacies, and direct that they shall be paid out of pure personalty (*x*), or such part of his ready money, goods, and personal effects as he can by law charge with the same (*y*), or out of such part of his personal property as is by law applicable for charitable purposes (*z*), or that his estate shall be so marshalled and administered as to give the fullest possible effect to the charitable bequests (*a*).

"Personalty" may mean "pure personalty."

A direction to pay a charitable legacy out of personalty has been held to mean that the legacy shall be paid out of pure personalty (*b*).

This was so where the testator had in his will distinguished between his personal and his leasehold estate (*c*).

It is, however, a question of construction, and where it appears that the testator did not use the words as meaning pure personalty only they will not be so construed (*d*).

Marshalling direction in will does not apply to additional legacy given by codicil.

Although an additional legacy given by a codicil is *prima facie* cumulative to that given by the will, yet where the legacy given by the will is directed to be paid out of pure personalty, and no such direction is attached to the legacy given by the codicil, the

(*t*) *Calvert v. Armitage*, 1 H. & M. 446, overruling on this point *Robinson v. Governors of London Hospital*, 10 Haro, 19, 29; and see *Sparling v. Parker*, cited Set. 4th ed. 601; *Williams v. Kershaw*, 1 Keen, 274, n.

(*u*) *Cherry v. Mott*, 1 My. & C. 123.

(*x*) *Sturge v. Dimadale*, 6 Beav. 462; *Baumont v. Oliveira*, L. R. 4 Ch. 309.

(*y*) *Robinson v. Geldard*, 3 Mac. & G. 735.

(*z*) *Tempest v. Tempest*, 7 De G. M. & G. 470. See *Johnson v. Lord Harrowby*, John. 425.

(*a*) *Wigg v. Nicholl*, L. R. 14 Eq. 92; see also *Nickisson v. Cockill*, 3 De G. J. & S. 622; *Gaskin v. Rogers*, L. R. 2 Eq. 284. As to what has been held sufficient to constitute a direction to marshal, see *Philanthropic Society v. Kemp*, 4 Beav. 581; *Biggar v. Eastwood*, 19 L. R. Ir. 49.

(*b*) *Nickisson v. Cockill*, 3 De G. J. & S. 622; *Roberts v. Jones*, W. N. 1880, 96.

(*c*) *Wilson v. Thomas*, 3 My. & K. 579.

(*d*) *Johnson v. Woods*, 2 Beav. 409.

marshalling direction does not apply to the legacy given by the codicil, which is accordingly liable to abate (e).

In cases where one of the objects for which a mixed fund of pure and impure personalty is bequeathed is an object, such as the building of a church, for which under the Church Building Act (f) a legacy up to 500*l.* may be given out of impure as well as pure personalty, the rule is, that the charity is entitled to 500*l.* out of the impure personalty, in addition to the pure personalty, to which alone it would otherwise have been entitled (g).

Cases within Church Building Act.

In *Sturge v. Dimsdale* (h), a testatrix created a mixed fund of realty and personalty for payment of her debts and legacies, but directed the charity legacies to be paid out of pure personalty. She afterwards directed her trustees to set apart a sum of stock sufficient to provide for a number of annuities, and as the annuitants died the stock let loose was to be applied in payment of the charity legacies. It was held that the testatrix had created a demonstrative fund of pure personalty, out of which the charity legacies were to be paid.

How far direction to marshal makes charitable legacies demonstrative.

In other cases expressions have been used indicating that charitable legacies directed to be paid out of pure personalty are, or are analogous to, demonstrative legacies (i). Inasmuch, however, as the direction of the testator as regards marshalling furnishes the sole guide, it is not very material to consider whether such charitable legacies ought or ought not to be called demonstrative (k).

The extent to which the testator has directed his assets to be marshalled in favour of charity, is a question to be decided upon the construction of the will (l). And, in determining this, of course no regard can be paid to the fact that it depends upon the result how far (if at all) the charitable legacy can take effect.

Extent to which assets marshalled.

A bequest of charitable legacies, followed by a direction that they shall be paid out of pure personalty, is a direction to marshal as between legatees, and, in such a case, the charitable legatees are entitled to be paid out of the pure personalty in priority to the other legatees (m).

Marshalling as between beneficiaries.

But such a direction does not show any intention to relieve the debts and expenses.

Debts and expenses.

(e) *Johnson v. Lord Harrowby*, John. 425.

(f) 43 Geo. III. c. 108. See n. (a) to sect. 8 of the Mortmain and Charitable Uses Act, 1888, *post*.

(g) *Sinnott v. Herbert*, L. R. 7 Ch. 232; *Champney v. Davy*, 11 Ch. D. 949.

(h) 6 Beav. 462.

(i) *Robinson v. Geldard*, 3 Mac. & G. 735; *Tempest v. Tempest*, 7 De G. M. & G. 470.

(k) *Beaumont v. Oliveira*, L. R. 4 Ch. 309.

(l) *Lewis v. Boolefour*, 38 L. T. N. S. 93, on app. W. N. 1879, 11; and see cases cited in following notes.

(m) *Robinson v. Geldard*, 3 Mac. & G. 746; *Tempest v. Tempest*, 7 De G. M. & G. 470; *Beaumont v. Oliveira*, L. R. 4 Ch. 309; *Re Hatton, Robson v. Gibbs*, 4 Times L. R. 311; and see *Att.-Gen. v. Lord Mountmorris*, 1 Dick. 379.

pure personalty from its obligation to contribute rateably to debts and funeral and testamentary expenses, and the costs of administration (*m*).

Tempest v. Tempest.

In *Tempest v. Tempest* (*n*) a testatrix having by her will made certain specific and pecuniary bequests to her general residuary legatee, and having also given various charitable legacies, directed the latter to be paid in precedence to other pecuniary legacies thereby bequeathed, out of such part of her personal property not specifically bequeathed as was by law applicable for charitable purposes. The pure personalty being insufficient to pay all the charitable legacies, it was held by Lord Cranworth, that in the administration of the testatrix's estate, the debts and the funeral and testamentary expenses and costs of the suit were, in the first place, payable rateably out of the pure personalty and out of the personalty savouring of realty, and that, after such payment, the charitable legacies were to be paid out of the balance of the pure personalty in precedence to the other legacies.

Beaumont v. Oliveira.

In *Beaumont v. Oliveira* (*o*) the testator bequeathed various charitable legacies, and directed that they should be paid out of his pure personal estate. He died possessed of pure personalty, leaseholds, and some real estate in Madeira. It was held that the debts, funeral and testamentary expenses, and costs, were payable rateably out of the whole estate, pure and mixed personalty alike; that the charities were then to take the residue of the pure personalty in part payment of their legacies; and that the residue of the charitable legacies, which the pure personalty was insufficient to satisfy, must abate in the proportion which the personalty savouring of realty (which could not be applied to charitable purposes) bore to the proceeds of the Madeira estate, which were not subject to the provisions of the Mortmain Act. "We cannot find," said Selwyn, L. J. (*p*), "in this will any expression of an intention to relieve the pure personalty from its obligation to contribute rateably with the rest of the estate to the burden of the administration charges, nor to cast that burden exclusively upon the rest of the estate, and we do not feel ourselves at liberty to imply any such intention."

Marshalling so as to throw debts and expenses on real estate and impure personalty.

A testator may, however, express an intention that his assets shall be marshalled not only as between beneficiaries, but also as between the charities on the one hand, and the other beneficiaries, and debts, funeral and testamentary expenses on the other hand.

(*m*) See cases cited in last note.

(*n*) 7 De G. M. & G. 470.

(*o*) L. R. 4 Ch. 309.

(*p*) At p. 319.

This may be effected by an express direction that debts, funeral and testamentary expenses shall be thrown upon the impure personalty or the impure personalty and the realty (q). And the same result would no doubt be produced by the clause used in *Wigg v. Nicholl* (r), that the estate shall be so marshalled and administered as to give the fullest possible effect to the charitable bequests.

The same effect may, however, of course, be produced by any language sufficiently indicative of an intention to this effect on the part of the testator.

Thus, if upon the construction of the will, it appears that the testator has directed the residue to be divided so as to separate property which can be validly bequeathed to a charity from that which cannot, and the former is given to charity, and the latter made applicable to the other purposes of the will, the debts and expenses will be thrown entirely upon the latter, so far as it is sufficient to discharge them, so that the former may be left free for the charities (s).

In *Wills v. Bourne* (t) a testator devised his real estate to trustees upon trust for sale, and directed the proceeds to be applied in payment of debts and an annuity and legacies previously bequeathed, and bequeathed his personal estate to the same trustees upon trust to convert and pay out of the proceeds so much of the said debts and legacies as the proceeds of the real estate were insufficient to meet, and to stand possessed of the residue of his personal estate upon trust for certain charities; and he declared that only such parts of his estate should be comprised in the residue and paid to the charities as might by law be given to charitable purposes. The testator having left real estate, and pure and impure personalty, it was held that the proceeds of the real estate and impure personal estate must be applied in payment of the debts and legacies before the pure personalty was resorted to, for that the testator had excluded impure personalty from the residue given to charities; and it followed that the impure personalty was to be applied for those purposes which must be satisfied before a residue could be arrived at.

In a recent case (u) a testatrix gave her real and personal estate to trustees upon trust to sell and convert, and out of the proceeds

Wills v. Bourne.

Re Arnold, Ravenscroft v Workman.

(q) *Taylor v. Linley*, 5 Jur. N. S. 701; and see cases cited *infra*.

(r) L. R. 14 Eq. 92, *ante*, p. 60.

(s) *Wills v. Bourne*, L. R. 16 Eq. 487; *Miles v. Harrison*, L. R. 9 Ch. 316; *Re Fitzgerald, Adolph v. Dolman*, W. N. 1877, p. 216; *Re Pitt's Estate, Lacy v. Stone*, 33 W. R. 653; *Re Arnold,*

Ravenscroft v. Workman, 37 Ch. D. 637. See, however, *Wigg v. Nicholl*, L. R. 14 Eq. 92; *Llewelllyn v. Rose*, W. N. 1869, 178.

(t) L. R. 16 Eq. 487; *Miles v. Harrison*, L. R. 9 Ch. 316.

(u) *Re Arnold, Ravenscroft v. Workman*, 37 Ch. D. 637.

to pay debts and legacies, and directed that such legacies should, in the first instance, be payable out of the proceeds of sale of her real and leasehold estate, if any, and she directed the trustees to pay the residue to charities, and declared that the "foregoing charitable legacies" should be paid out of such part of the pure personal estate as was legally applicable for that purpose. It was held that the testatrix had in effect directed that the residue given to the charities should consist exclusively of pure personal estate, and that the pure personalty must, so far as possible, be reserved for the charities.

Specific gift
of personalty.

Again, the pure personalty may be specifically bequeathed to charity, in which case the charity will receive all the benefits which belong to such a legacy (x).

Exoneration
of personalty
from debts,
&c.

Another case of a similar kind is *Kilford v. Blaney* (y). There was what amounted to an express direction that funeral and testamentary expenses, debts, and legacies should be borne by the real and leasehold estates in exoneration of the rest of the personalty, which was given to charity. The residue of the personalty comprised some impure personalty, as to which the gift failed. It will be seen that in this case there was in effect a specific bequest of the personalty to charity.

Exoneration
does not
extend to gift
which fails.

The exoneration does not, in such a case, extend to the impure personalty, the gift of which fails, because that portion of the property does not pass under the will, and consequently none of the provisions of the will apply to it (z).

What suffi-
cient to effect
such exonera-
tion.

Clear words are required to exonerate the pure personalty from liability to debts, expenses, and legacies; a mere charge of them on the real estate is not sufficient to produce this result (a).

Direction to
marshal
residue.

It should, however, be borne in mind that a mere direction to marshal residue, as by a direction to pay to charity so much of the residue as may be lawfully bequeathed to charity, will not have the effect of throwing debts and expenses, and pecuniary legacies on the impure personalty and the realty. The reason of this is, that residue means that which remains after payment of debts, administration expenses, including the costs of an administration action, and legacies (b), and all that is given to the charity is so much of that residue as is pure personalty. In that case the estate must be administered, so far as is necessary, for the purpose of ascertaining the residue, in the same way as if there were no charitable gift in question (c).

(x) *Shepherd v. Beetham*, 6 Ch. D. 597.

(y) 29 Ch. D. 145; 31 Ch. D. 56.

(z) *Ibid.*

(a) *Ibid.* See *Dacre v. Patrickson*, 1

Dr. & Sm. 182.

(b) See *Trethow v. Holyar*, 4 Ch. D. 53; *Blann v. Bell*, 7 Ch. D. 382.

(c) *Edwards v. Hall*, 11 Hare, see pp. 22, 23; *Re Coleman, Collins v. Cole-*

It was held in one case, where so much of the residuary personal estate as could by law be disposed of for charitable purposes was given to charity, and the rest of the personal estate was left undisposed of, that the costs of an administration action should be borne by the impure personalty (*d*). But it is now settled that the costs of an administration action cannot be directed to be paid out of a lapsed share, as, for example, so much of a residue given to charity as fails (*e*).

Legacy duty on a legacy bequeathed free of duty is equivalent to an additional legacy, and can only therefore be paid out of pure personalty (*f*).

Where the gift is of a clear annuity, or of a sum sufficient to produce a clear annual income of specified amount, it is construed to be a gift free of legacy duty (*g*).

But the mere fact that if legacy duty is deducted the legacy will be insufficient for the purpose for which it was intended, is not enough to show an intention that it should be given free of duty (*h*).

A legacy given in pursuance of a covenant stands in the same position as any other legacy (*i*).

A legacy, the payment of which is postponed, ranks equally with others in the distribution of the assets (*k*).

In the case of ordinary legacies, a legatee having a vested interest may, on his attaining twenty-one, call for payment of his legacy, even though the accumulation thereof may be directed for a period in excess of the limits allowed by the statute (*l*). This, however, is not the case where the legacy is charitable. Thus, in *Harbin v. Masterman* (*m*), where charities were absolutely entitled to personalty directed to be accumulated, it was held by Wickens, V.-C., that the charities were not entitled to have the accumulations stopped, and the legacy paid at once; but that the accumulations must go on until further order.

Where there has been a bequest to a charity which has been

man, W. N. 1884, 104; *Elliott v. Dearsley*, 16 Ch. D. 322; and see *Gaskin v. Rogers*, L. R. 2 Eq. 284.

(*d*) *Taylor v. Mogg*, 27 L. J. Ch. 816. See also *Taylor v. Linley*, *ibid.* 701.

(*e*) *Blann v. Bell*, 7 Ch. D. 382.

(*f*) *Wilkinson v. Barber*, L. R. 14 Eq. 96; *Farrer v. St. Catherine's Coll. Cambridge*, L. R. 16 Eq. 19.

(*g*) *Re Coles' Will*, L. R. 8 Eq. 271.

(*h*) *Re De Rosaz*, *Rymer v. De Rosaz*, 2 Times L. R. 871.

(*i*) *Fox v. Lounde*, L. R. 19 Eq. 453.

(*k*) *Nickisson v. Cockill*, 3 De G. J. & S. 622.

(*l*) *Gosling v. Gosling*, John. 265; *Coventry v. Coventry*, 2 Dr. & Sm. 470; *Phillips v. Phillips*, W. N. 1877, 260.

(*m*) L. R. 12 Eq. 559.

tions follow capital.

unapplied and allowed to accumulate, the accumulations go to the charity along with the original bequest (*n*).

Legacy when barred by Statute of Limitations.

Where there has been no admission of assets, or trust created, or sum set apart for the payment of a charitable legacy, it is barred at the end of twelve years by the Statutes of Limitations (*o*).

Lunacy.

Occasionally charitable subscriptions and donations are allowed to be made out of a lunatic's estate (*p*).

(*n*) *Forbes v. Forbes*, 18 Beav. 552.

(*o*) *Cadbury v. Smith*, L. R. 9 Eq. 37.

(*p*) *Re Frost*, L. R. 5 Ch. 699; *Re Strickland*, 6 *ibid.* 226. See *Re Evans*, 21 Ch. D. 297; *Re Darling*, 39 Ch. D. 208.

CHAPTER IV.

JURISDICTION.

SECTION I.

JURISDICTION OF VISITORS.

Corporations Generally.

BEFORE proceeding to examine the position and jurisdiction of visitors of charities, some preliminary observations are required as to the nature of charitable foundations.

The duty of carrying charitable trusts into execution may be entrusted either to individual trustees or to corporations.

In the present section we are concerned solely with the cases in which corporations are the depositories of charitable trusts, for they alone are subject to visitation.

Corporations, unless they exist by the common law or prescription (a), can only be created by the express consent of the Crown, either by means of an Act of Parliament or a charter.

The first division of corporations is into corporations sole (b) and corporations aggregate.

Corporations sole may hold estates for charitable uses (c). Thus, a parson may take lands, but not goods, and hold them in succession to the use of the parish (d).

In *Att.-Gen v. Ruper* (e), it was said that, "as on the one hand the parson of the church is a corporation for the taking of land for the use and benefit of the church, and not capable of taking goods or any personalty on that behalf; so on the contrary the churchwardens are a corporation to take money or goods, or other per-

(a) In these cases there is a presumption of law that they were originally created by the Crown.

(b) Corporations sole consist of one person only, and his successors, who, by being incorporated, possess certain legal capacities and advantages, particularly that of perpetuity, which otherwise they could not have had. Instances of

sole corporations are—the sovereign, bishops, rectors, and vicars: Co. Litt. 43.

(c) *Banister's Case*, Duke, 139; Grant on Corporations, p. 648.

(d) *Att.-Gen. v. Ruper*, 2 P. Wms. 125.

(e) *Supra*.

Nature of charitable foundations.

Charitable trusts vested in trustees or corporations.

Only corporations visitable.

Creation of corporations.

Corporations sole and aggregate.

Corporations sole may hold property on charitable trusts.

Parson.

sonal things, for the use of the church, but are not enabled to take lands" (h).

Ecclesiastical and lay corporations.

Eleemosynary and civil corporations.

Ecclesiastical corporations.

The division of corporations which is chiefly material for our present purpose is, however, the division into ecclesiastical corporations and lay corporations (i); lay corporations being again divided into eleemosynary and civil.

Ecclesiastical corporations are those of which not only the members are spiritual persons, but of which the objects also are spiritual. They are corporations created for the furtherance of religion, and perpetuating the rights of the church (i).

"A benefice is not made spiritual because it can be held only by a person in holy orders; it is the object for which the house is established that makes it a spiritual or lay foundation. If a hospital be established for the relief of the poor, and if there be no cure of souls attached to it, it is a lay foundation, although the founder shall have annexed, as a qualification for the office, that no person shall be master or warden of it except a clerk in holy orders" (k).

Civil corporations.

Civil corporations are corporations created for a variety of temporal purposes. The King and corporations of cities and towns are both civil corporations; the one established for the preservation of the throne, the others for the good government of the particular localities: so, also, various trading companies, for the furtherance of manufactures and commerce; and churchwardens, for the preservation of the goods of the parish, and so forth (l).

Under the same head fall corporations for the advancement of learning, as the Universities of Oxford and Cambridge (l); the Colleges of Physicians and Surgeons, the Royal Society, and so forth.

Eleemosynary corporations.

Eleemosynary corporations are such as are constituted for the perpetual distribution of the free alms or bounty of the founder to such persons as he has directed (l).

Hospitals and colleges.

Eleemosynary corporations are of two kinds—hospitals (m) and colleges (n).

(h) With regard to charities vested in the rector and churchwardens of a parish, or the churchwardens and overseers, see *post*, pp. 238, 239.

(i) 1 Bl. Com. p. 470.

(k) *Per* Lord Romilly in *Att.-Gen. v. St. Cross Hospital*, 17 Beav. at p. 466.

(l) 1 Bl. Com. p. 471.

(m) By 39 Eliz. c. 5, made perpetual by 21 Jac. I. c. 1, all and every person and persons by deed enrolled in Chancery were enabled to found 'hospitals, Mai-

sons de Dieu, abiding places or houses of correction' for the poor, to be 'incorporated and have perpetual succession for ever.' See *Att.-Gen. v. Corporation of Newcastle*, 12 Cl. & F. 402, where it was held that a corporation may exercise the powers given by these Acts to any "person or persons." See, further, n. (a) to sect. 8 of the Mortmain and Charit. Uses Act, 1888, *post*.

(n) Co. Litt. 342a.

"There is no manner of difference between a college and an hospital, except only in degree; an hospital is for those that are poor, and mean, and low, and sickly: a college is for another sort of indigent persons; but it hath another intent, to study in, and breed up persons in the world, that have not otherwise to live; but still it is as much within the reason of hospitals. And if in an hospital the master and poor are incorporated, it is a college having a common seal to act by, although it hath not the name of a college (which always supposeth a corporation), because it is of an inferior degree" (o).

The colleges of the Universities of Oxford and Cambridge are eleemosynary corporations, although they are sometimes totally composed of ecclesiastical persons. Colleges of universities.

A hospital for the poor, without cure of souls, is an eleemosynary foundation, although the master is required to be in holy orders (p). Hospital lay foundation, though master in holy orders.

There are, moreover, corporations of an eleemosynary character, such as where trustees, governors, or the schoolmaster and usher (q), or the schoolmaster alone, are incorporated, for the education of children at grammar and free schools; and there are also schools connected with colleges and cathedrals (r). Grammar and free schools.

There are also modern corporations created by Act of Parliament or by charter, to carry into execution some public charity by means of incorporated trustees; such as "The Governors of the Bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy," "The Society for the Propagation of the Gospel in foreign parts," and "The Incorporated Society for promoting the enlargement, building, and repairing of churches and chapels" (s). Modern charitable corporations.

These societies are not, however, to be classed with eleemosynary corporations properly so called.

Corporations, such as, for example, eleemosynary corporations, created for the purpose of carrying into effect objects which the law holds to be charitable, may be properly called charitable corporations. Charitable corporations.

Corporations not created for charitable purposes may also be the depositories of charitable trusts. And such trusts will, as we shall see (t), always be enforced. Charitable trusts vested in corporations enforced.

(o) *Per Holt, C. J., in Phillips v. Bury*, 2 T. R. at p. 353.

(p) *Att.-Gen. v. St. Cross Hospital*, 17 Beav. 435, 465.

(q) *Att.-Gen. v. Price*, 3 Atk. 108.

(r) *Att.-Gen. v. Magdalen College, Oxford*, 10 Beav. 402; *Whiston v. Dean*

and *Chapter of Rochester*, 7 Hare, 532.

(s) 2 & 3 Anne, c. 20; 6 Anne, cc. 24, 54; 1 Geo. I. stat. 2, c. 10; 3 Geo. I. c. 10. See *Church Building Society v. Barlow*, 3 De G. M. & G. 120.

(t) *Post*, p. 96.

Municipal corporations.

One very important class of civil corporations is municipal corporations (*u*).

Property formerly held by them on special charitable trusts.

These corporations in former times held large quantities of property upon special charitable trusts distinct from the public purposes to which, in general, their corporate property was applicable. Of such charitable trusts it has, as we shall see, been the policy of the legislature to divest them (*x*).

Application of general corporate funds.

Except in the case of property subject to such special charitable trusts as above mentioned, the income of the whole corporate property of municipal corporations, whether real or personal, subject to any special rights possessed by freemen and inhabitants of the borough, and the wives, widows, children, &c. of freemen, which rights are expressly preserved (*y*), goes into the borough fund, and if that is insufficient for the purposes to which it is rendered applicable by the Act, the deficiency is made up by means of a borough rate (*z*).

General corporate funds charitable.

It would seem that the property of municipal corporations, whether subject to trusts for the benefit of the freemen, or whether applicable to the borough fund, and also any funds raised by means of rates, must be considered to be subject to a charitable trust (*a*).

But although the corporate property of municipal corporations is strictly charitable, yet, inasmuch as such corporations are governed by statutes of a special nature, it is not possible in the present

(*u*) Municipal corporations are regulated by the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, and the Municipal Corporations Act, 1883, 46 & 47 Vict. c. 18. The Municipal Corporations Act, 1882, repealed and re-enacted in a consolidated form the Municipal Corporations Act, 1835, 5 & 6 Will. IV. c. 76, and a large number of amending Acts. It relates only to the municipal corporations specified in the schedule to the Act of 1835. The Municipal Corporations Act, 1883, relates to corporations not included in the Act of 1882. It dissolves all municipal corporations mentioned in the schedules to the Act, except those to which her Majesty granted a charter before the 25th March, 1886. The Act provides for the appropriation of the funds of the dissolved corporations by means of schemes for the public benefit of the inhabitants. The Municipal Corporations Act, 1882, so far as material to the present work, and the Municipal Corporations Act, 1883, are printed, with notes, in Part III. of this Book, *post*.

(*x*) As to this, see 5 & 6 Will. IV. c. 76, s. 71, Charitable Trusts Act, 1853, s. 65 and 45 & 46 Vict. c. 50, s. 133,

post, pp. 197 *et seq.*, where these sections and the cases upon them are dealt with.

(*y*) Municipal Corporations Act, 1882, s. 205; and see Municipal Corporations Act, 1835, s. 2. See also *post*, p. 199.

(*z*) Municipal Corporations Act, 1882, ss. 139, 140, 144.

(*a*) Property, the proceeds of which become applicable to the borough fund, is held upon public trusts (see *Att.-Gen. v. Aspinall*, 2 My. & C. 613; *Att.-Gen. v. Mayor of Brecon*, 10 Ch. D. 204), and is therefore charitable. See cases cited *ante*, pp. 11 *et seq.* So, also, it must be considered, are funds raised by means of rates. See *Att.-Gen. v. Eastlake*, 11 Hare, 205; and other cases cited *ante*, pp. 14, 15. And it is apprehended that since the case of *Goodman v. Mayor of Saltash*, 7 App. Cas. 633, it cannot be disputed that even property held subject to trusts in favour of the general body of freemen of the borough is also charitable. See, however, *Frestney v. Mayor, &c. of Colchester*, 21 Ch. D. 111, in which Hall, V.-C., seems to have held a contrary opinion. See also *Att.-Gen. v. Mayor of Stafford*, W. N. 1878, 74, and *ante*, p. 13.

work to enter in detail into the regulation and administration of the general property of these bodies (*b*).

Alteration of Corporation.

An eleemosynary corporation, established by charter from the Crown, is subject to no further control than that reserved by the charter. The Crown cannot, therefore, without the consent of the corporation alter the charter; nor can it add to or diminish the franchises of the corporation, or the number of its trustees or members, or control its administration (*c*). Crown cannot interfere after charter granted.

When, however, an integral part of the corporation is gone, and the corporation has no power of restoring it or of doing any corporate act, the corporation is so far dissolved that the Crown may grant a new charter (*d*). Corporation ceasing to exist.

Where the number of members is indefinite, an eleemosynary corporation may incorporate new members, provided they do not make an ill use of such power (*e*). Alteration of number of members.

But where a corporate charity is founded under letters patent from the Crown, the founder cannot make any alteration in it, either by engrafting new members upon it, or by subjecting the corporate property to any trust for any other person or purpose. Not where members prescribed by letters patent.

In *Att.-Gen. v. Dulwich College* (*f*), Edward Alleyne was empowered by letters patent to found a college at Dulwich, consisting of a master and a specified number of other members, who were thereby created a corporation, with power to take certain lands. Edward Alleyne was empowered to make ordinances for the government thereof, and for the better ordering of the estates. He established the college, and conveyed the lands to the use of the master and other members, of the number specified by the letters patent, and to no other intent and purpose whatsoever. He afterwards made ordinances, whereby, amongst other things, he added to the number of members specified by the letters patent, and appropriated to them a portion of the revenues of the charity. It was held that he had no power to create additional members of the corporation, or to declare any trust of the property in their favour.

(*b*) The Municipal Corporations Act, 1883, however, which confers powers on the Charity Commissioners, falls within the scope of the Book. Wherever, also, the law relating to municipal corporations is material, it is incidentally referred to.

(*c*) *Reaz v. Pasmore*, 3 T. R. 199.

(*d*) *Ibid.* In this case the Court also has power to apply the revenues *cy-près*. See *Att.-Gen. v. Hicks*, Highm. Mortm. p. 336; *post*, pp. 91, 92.

(*e*) *Att.-Gen. v. Talbot*, 3 Atk. 662, 676.

(*f*) 4 Beav. 255. See *Att.-Gen. v. St. Cross Hospital*, 18 Beav. 476.

What Corporations are visitable and who are Visitors.

What corporations visitable.

Ecclesiastical and eleemosynary corporations are visitable.

Civil corporations are commonly said to be not visitable, but subject to the jurisdiction of the Court of Queen's Bench (*g*). The meaning of this is, that such corporations are in fact visitable by the Crown, but the Court of Queen's Bench (now the Queen's Bench Division of the High Court of Justice) is the place appointed for the exercise by the Crown of this visitatorial jurisdiction (*h*).

Visitors of ecclesiastical corporations.

Ecclesiastical or spiritual corporations are generally visitable by the ordinary (*i*), except royal foundations, free chapels, and donatives, which are subject only to the visitation of the patron, whether that patron be the Crown or a subject (*k*).

There are also some spiritual hospitals, which were formerly subject only to the visitation of the Pope. The jurisdiction of the Pope having been abolished in the reign of Henry VIII., the right of visitation was first vested in the Crown by commission under the Great Seal (*l*), and afterwards (*m*) in the ordinary of the diocese (*n*), or in such person or persons as the King should appoint.

Visitation of eleemosynary corporations,

The right of visitation is incident to all eleemosynary corporations (*o*).

Such corporations are the creatures of the founder, and the law gives to the founder or his heirs, or the persons specially appointed by him, power to determine concerning his own creation (*p*).

by founder and his successors or heirs.

In the absence of any special appointment of visitor eleemosynary corporations are visitable by the founder and his successors or heirs. If the King is founder, the King and his successors are visitors. If a private person is founder, then he and his heirs are, by implication of law, visitors (*q*).

Heirs of founder

If the heirs of the founder become extinct (*r*), or where they

(*g*) This is now exercisable by the Queen's Bench Division. *Jud. Act*, 1873, s. 34.

(*h*) See Shelf. Mortm., p. 324; *Lewin on Trusts*, 8th edit. p. 530.

(*i*) 2 Roll. Abr. 229, 230, 231; *Birmingham School Case*, Gilb. 178.

(*k*) Co. Litt. 344a; *Appleford's Case*, 1 Mod. 85; *Anon.*, 12 Mod. 233; *Fairchild v. Gayre*, Cro. Jac. 63.

(*l*) 25 Hen. VIII. c. 21.

(*m*) 31 Hen. VIII. c. 13. See *Att.-Gen. v. St. Cross Hospital*, 17 Beav. 435.

(*n*) See per Holt, C. J., in *Phillips v. Bury*, 2 T. R. at p. 353.

(*o*) *Ibid.*

(*p*) *Ibid.*; *Green v. Rutherford*, 1 Ves. Sen. 472; *Spencer v. All Souls' Coll.*,

Wilm. Notes, 163.

(*q*) *Eden v. Foster*, 2 P. Wms. 326; *Att.-Gen. v. Gaunt*, 3 Swanst. 148; *Att.-Gen. v. Dedham School*, 23 Beav. 350.

(*r*) *Rex v. St. Catherine's Hall*, 4 T. R. 233, overruling *Rex v. Gregory*, 4 T. R. 240, n.; *Anon.*, 12 Mod. 232. Where the rights of nominating the poor and visiting an incorporated hospital were vested in the lord of a manor as incidental thereto, such rights upon his attainder became forfeited to and vested in the Crown, who had thenceforth the right of appointing the almspeople and visiting the charity. *Att.-Gen. v. Exelme Hospital*, 17 Beav. 366, 381. Forfeitures for treason and felony were abolished by 33 & 34 Vict. c. 23.

cannot be found (*t*), or are lunatic (*u*), the visitatorial power de- extinct or
lunatic.
volves on the Crown.

In eleemosynary foundations, such as colleges and hospitals, Who is
founder.
where there is an endowment of lands, the law distinguishes two species of foundation. There is first the *fundatio incipiens*, or incorporation. In this sense the King is the founder of all colleges and hospitals. There is also the *fundatio perficiens*, or endowment. In this sense the first gift of the revenues is the foundation, and he who gives them is the founder. It is in this last sense that a man is generally called founder of a college or a hospital (*v*).

If the King and a private individual join in endowing an King joining
in the endow-
ment.
eleemosynary foundation, the King alone is the founder (*x*); but it seems that if a private person were the founder, he would not cease to be so, although the Crown should subsequently endow the foundation even with large possessions (*y*).

By 2 Hen. V. st. 1, c. 1, it was enacted that hospitals of the King's Legislation as
to visitation
of hospitals.
foundation should be visitable by the ordinaries, by virtue of the King's commission directed to them, and that other hospitals should be visitable by the ordinaries.

During the reign of Queen Elizabeth, the rights of founders were better respected.

By 14 Eliz. c. 5 (*z*), bishops were directed to visit only hospitals of which no visitor was appointed by the founders (*a*). And by 39 Eliz. c. 5 (*b*), hospitals erected pursuant thereto are to be visited by such person or persons, bodies politic or corporate, their heirs, successors, or assigns, as shall be nominated or assigned by the founder or founders thereof, their heirs or assigns, according to such rules, statutes, and ordinances, as shall be set forth, made, devised, or established by him or them, in writing under his or their hand and seal, not being repugnant or contrary to the laws and statutes of the realm.

The colleges of Oxford and Cambridge are, as we have seen (*c*), Visitation of
Oxford and

(*t*) *Ex parte Wrangham*, 2 Ves. Jun. 609; *Att.-Gen. v. Earl of Clarendon*, 17 Ves. 498; *Att.-Gen. v. Black*, 11 Ves. at p. 192.

(*u*) *Att.-Gen. v. Dixie*, 13 Ves. 519, 533.
(*v*) 10 Rep. 3; *Shelf. Mortm.* 323, 324.

(*z*) Co. Inst. Part 2, 68.

(*y*) *Ibid.*, where the foundation was of an abbey or priory. See *Magna Charta*, 9 Hen. III. c. 33; *Att.-Gen. v. Dedham School*, 23 Beav. 350.

(*x*) Repealed by Stat. Law Rev. Act, 1863.

(*a*) Sect. 30.

(*b*) Made perpetual by 21 Jac. I. c. 1.

(*c*) *Ante*, p. 69. The Universities of Oxford and Cambridge are not eleemosynary corporations: *ante*, p. 68. The colleges of Oxford and Cambridge and the collegiate schools of Eton, Winchester, and Westminster are excepted from 21 & 22 Vict. c. 71, by which the Charity Commissioners are empowered to substitute the bishop of one diocese for the bishop of another as trustee of certain trusts: see sect. 4 of that Act, *post*.

Cambridge colleges.

eleemosynary corporations; they are visitable by the founder's heirs or visitors specially appointed by him. But where he has appointed no visitor, and his heirs become extinct, the right of visitation belongs to the Crown.

These colleges were formerly considered ecclesiastical foundations, and as such were visitable by the ordinary; and in some of the colleges of Oxford the Bishop of Lincoln, in whose diocese Oxford was formerly comprised, has immemorially exercised visitatorial authority. This can only be ascribed to his supposed title as ordinary to visit them among other ecclesiastical foundations (*d*).

Appointment of visitor by founder.

The founder may delegate his power of visitation either generally or specially (*e*).

General and special visitors.

If he merely give a power to visit without qualification, as when the words used are *visitor sit*, the visitor so constituted will have all consequential powers, as the power to receive appeals, and to exercise all other acts of visitatorial jurisdiction (*f*).

The founder may, however, appoint a particular mode in which a portion of the visitatorial power shall be exercised. He may, for instance, appoint a special visitor for a particular purpose and no further. In that case the power of the general visitor will be circumscribed to that extent (*g*).

So he may appoint a general visitor, and yet except particular cases out of his jurisdiction; or he may appoint an inferior particular power, to be executed without going to the visitor in the first instance (*h*); or the visitors may be subjected to the control of a superior visitor having power to remove them (*i*).

Division of visitatorial power.

The visitatorial power, moreover, may be divided; one set of visitors being constituted for one purpose, and another for another purpose, as is the case in several colleges (*k*).

Power of general visitor only limited by express words. How appointed.

Where, however, a general visitor is appointed his power can only be limited by express provision (*l*).

No special form of words is necessary for the appointment of either a general or special visitor; any words showing the intention are sufficient (*m*). The exclusion of the founder's heirs shows

(*d*) 1 Bl. Com. p. 483.

(*e*) *Eden v. Foster*, 2 P. Wms. 326.

(*f*) *St. John's Coll. Cambridge v. Todington*, 1 Burr. at p. 200; *Att.-Gen. v. Talbot*, 1 Ves. Sen. at pp. 78, 79.

(*g*) *St. John's Coll. Cambridge v. Todington*, *supra*.

(*h*) *Ibid.* at p. 200. See also *Bishop of Ely v. Bentley*, 2 Bro. P. C. 220; *Re v. Bishop of Ely*, 2 T. R. at p. 328; *Re v. Bishop of Worcester*, 4 M. & S. 420.

(*i*) *Att.-Gen. v. Middleton*, 2 Ves. Sen. 327.

(*k*) Per Lord Hardwicke, in *Att.-Gen. v. Middleton*, *ibid.* at p. 329. See also *Att.-Gen. v. Talbot*, 3 Atk. 662.

(*l*) *Re v. Bishop of Worcester*, *supra*.

(*m*) *Att.-Gen. v. Talbot*, 3 Atk. 662; *Att.-Gen. v. Middleton*, 2 Ves. Sen. at p. 328; *St. John's Coll. Cambridge v. Todington*, 1 Burr. 168, 201.

strongly an intention to appoint a general visitor, and not a visitor for a particular purpose (*n*).

In *Att.-Gen. v. Talbot* (*o*), Lord Hardwicke held the Chancellor of the University of Cambridge to be the general visitor of Clare Hall, without express words of appointment, the appointment being implied from the fact that various branches of the visitatorial power had been expressly given to him, that he possessed the right of interpreting the statutes, and that the founder's heir was expressly excluded (*p*).

Implied appointment.

Lord Eldon even said that he could conceive cases in which the power to interpret and determine doubts upon the statutes, given in clear words, might itself constitute visitatorial power (*q*).

It has been laid down that where a hospital is incorporated as a distinct corporate body, and governors appointed, the founder will be considered to have parted with the visitatorial power, and to have made the governors visitors; for where the poor are the corporation, and the revenues are lodged in them as a corporate body, there can be no object in creating governors, except to make them visitors (*r*).

Governors when visitors.

But if the governors are incorporated and not the poor, and the revenues are lodged in them, then the founder and his heirs are visitors. The governors in that case could not be visitors, because they would have to visit themselves; and if there were no visitatorial power over such corporations, they would be uncontrollable (*s*).

Not where they have management of revenues.

But the mere fact that the legal estate is in the governors, so long as they do not receive the revenue, is no reason why they should not possess the visitatorial power (*t*).

Having legal estate is no objection.

In the *Case of Sutton's Hospital* (*u*), although the governors alone were incorporated, and the freehold vested in them, the incorporation, which was by Act of Parliament, expressly lodged the visitatorial power in them.

Expressly appointed.

Where a school was founded and endowed by the Crown, and governors were appointed by letters patent, in whom the legal estate of the endowment was vested, but they were not expressly constituted visitors, it was held that they were not visitors by construction of law, but were subject to the visitatorial power which remained in the Crown (*x*).

Royal foundation.

(*n*) *Att.-Gen. v. Talbot*, *supra*.

(*o*) 3 Atk. 662, 673.

(*p*) See also *Ex parte Kirkby Ravensworth Hospital*, 15 Ves. 314.

(*q*) Per Lord Eldon, in *Ex parte Kirkby Ravensworth Hospital*, 15 Ves. at p. 315.

(*r*) *Case of Birmingham School*, Gilb. 180; *Att.-Gen. v. Middleton*, 2 Ves. Sen.

at p. 329.

(*s*) *Case of Birmingham School*, *supra*.

(*t*) *Att.-Gen. v. Middleton*, 2 Ves. Sen. at p. 329.

(*u*) 10 Co. 13, 30, 31. See also the observations of Lord Hardwicke in *Att.-Gen. v. Middleton*, *supra*.

(*x*) *Eden v. Foster*, 2 P. Wms. 325.

No visitor where poor not incorporated and management in hands of trustees.

Appointment by Court of visitor of grammar school.

Endowed Schools Acts.

Transfer of visitatorial power to Queen to be exercised through the Charity Commissioners.

Schemes of Charity Commissioners provide for species of visitatorial jurisdiction.

"Where the poor, or those that receive the charity, are not incorporated, but there are certain trustees who dispose of the charity, according to the case in 10 Co. (u), there is no visitor; because the interest of the revenue is not vested in the poor that have the benefit of the charity, but they are subject to the order and direction of the trustees" (x).

The Grammar Schools Act (y) authorizes the bishop of the diocese, in cases in which no visitatorial authority in respect of the discipline of a grammar school is vested in any person or persons, to apply to the Court (z); and the Court may then order that the bishop shall be at liberty to visit and regulate the school in respect of the discipline thereof, but not further or otherwise (a).

By sect. 16 of the same Act the Court is empowered, in the event of a visitor refusing or neglecting to exercise his power within a reasonable time after the same ought to be exercised, or in the event of its being uncertain in whom the right to exercise such power is vested, to appoint some person to exercise the visitatorial power *pro hac vice*.

By the Endowed Schools Acts (b) provision is made for the regulation of endowed schools (c) by means of schemes framed by the Charity Commissioners.

By any scheme under those Acts (d) the Charity Commissioners may provide for the transfer to her Majesty of all rights and powers exerciseable by any person, persons, or body corporate as visitor of the endowed school or educational endowment to which the scheme relates, except cathedral schools; and such rights and powers, if vested in her Majesty at the commencement of the Endowed Schools Act, 1869, or if transferred to her Majesty by the scheme, are to be exercised by and through the Charity Commissioners.

Schemes framed by the Charity Commissioners, as well under the Charitable Trusts Acts as under the Endowed Schools Acts, commonly contain clauses establishing in the Charity Commissioners a species of visitatorial jurisdiction. These clauses provide that questions affecting the regularity or validity of proceedings under the scheme shall be determined exclusively by the Commissioners, and that if any doubt or question arises among the trustees

(u) *Sutton Hospital Case*, 10 Co. 13, 30, 31.

(x) Per Holt, C. J., in *Phillips v. Bury*, 2 T. R. at pp. 352, 353.

(y) 3 & 4 Vict. c. 77, s. 15. See this Act set out *post*, App. I.

(z) Now the Chancery Division.

(a) As to the foundations exempted

from this Act, see sect. 24.

(b) End. Schools Acts, 1869, 1873, and 1874, *post*.

(c) These include grammar schools; see End. Schools Act, 1869, s. 8, sub-s.

(3), *post*.

(d) End. Schools Act, 1869, s. 20, *post*.

as to the construction of the scheme or the management of the charity, they may apply to the Commissioners, whose decision shall be binding on the trustees and all persons claiming under the trust (e).

In the case of schemes under the Endowed Schools Acts, it has been expressly decided that it is within the power of the Commissioners to insert clauses of this kind (f).

That there is similar power in the case of schemes under the Charitable Trusts Acts seems beyond question (g).

Powers and Duties of Visitors.

The visitatorial power has been defined by Holt, C. J., to be "an authority to inspect the actions and regulate the behaviour of the members that partake of the charity;" the object thereof being "to prevent all perverting of the charity, or to compose differences that may happen among" the members of the corporation themselves (h).

Nature of
visitatorial
jurisdiction.

"The original of all such power is the property of donor, and the power every one has to dispose, direct, and regulate his own property; like the case of patronage; . . . the nature of this power is *forum domesticum*, the private jurisdiction of the founder" (i).

The ordinary duties of a visitor comprise the election and amotion of corporators, such as the master or fellows of a college, the pensioners of a hospital (k), or the governors (l), the regulation of and rectification of almonries, the internal management of the charity (m), and the removal of officers (n).

Duties of
visitors.

Deciding questions upon the construction of the statutes of the foundation is part of the duty of a visitor. Thus, the questions whether travelling fellows of Wadham must be members of the college (o), or whether a fellow of a college had a right to let his

Construction
of statutes.

(e) For these clauses, see forms of schemes No. 1, clauses 67 and 68, *post*, App. II.

(f) *Re Hodgson's School*, 3 App. Cas. 857. See End. Schools Act, 1869, s. 23, *post*. See also *Reg. v. Wilson*, W. N. 1888, 12.

(g) See Charit. Trusts Act, 1860, s. 2, *post*, which gives unlimited discretion as to the provisions to be contained in schemes. And the clauses in question do little more than make provision for the exercise of the powers expressly conferred upon the Commissioners by the Charit. Trusts Act, 1853, s. 16.

(h) *Philips v. Bury*, 2 T. R. at p. 353.

(i) *Green v. Rutherford*, 1 Ves. Sen. at p. 472.

(k) *Att.-Gen. v. Talbot*, 3 Atk. 662; *Dr. Bentley's Case*, cited *ibid.* at p. 668; *Philips v. Bury*, 2 T. R. at p. 357; *Ex parte Wrangham*, 2 Ves. Jun. 609; *Att.-Gen. v. Earl of Clarendon*, 17 Ves. at p. 498; *Ex parte Inge*, 2 R. & M. 590; *Att.-Gen. v. Archbishop of York*, *ibid.* at p. 488.

(l) *Att.-Gen. v. Dixie*, 13 Ves. 519; *Cases of Grantham School and Richmond School*, cited 17 Ves. at p. 499.

(m) *Ex parte Berkhamstead Free School*, 2 V. & B. 134; *Att.-Gen. v. Dulwich Coll.*, 4 Beav. 255; *Att.-Gen. v. Magdalen Coll., Oxford*, 10 Beav. 402.

(n) *Whiston v. Dean and Chapter of Rochester*, 7 Hare, 532.

(o) *Att.-Gen. v. Stephens*, 1 Atk. at p. 360.

chambers, were held by Lord Hardwicke to fall within the cognizance of the visitor (*p*). So, also, the questions whether the master of a hospital is bound to reside (*q*), or perform divine service (*r*), or how a university shall conduct its examinations (*s*).

Hearing
appeals, &c.

The power of judging and giving relief upon complaints and appeals is incident to the office of general visitor (*t*).

Contumacy
against
visitor's
authority.

Contumacy against the authority of the visitor on the part of a corporator is of itself, whether there be any statute upon the subject or not, a good cause for his amotion (*u*).

Visitors
bound by
statutes.

In all cases the visitor is bound and must be guided by the statutes regulating the charity. If he acts contrary to or exceeds them, he acts without jurisdiction, and his act is a nullity (*x*).

Visitation
must be made
at time men-
tioned in
statutes.

A visitation made contrary to the statutes of the corporation is bad. Thus, if by the statutes of a college a visitor is, unless called at the request of the college, to make his visitation but once in five years, a visitation within the five years, not made in pursuance of a special summons, is void; and any sentence passed by him would be a nullity, as having been made *coram non jure* (*y*).

Visitor may
hear com-
plaints at any
time.

A visitor has, however, a standing authority at all times to hear the complaints and redress the grievances of particular members; for although the visitation can only be made at fixed times, yet the hearing appeals and redressing grievances is the proper office of the visitor at all times (*z*).

Power of
special visitor.

A special visitor has the power which the founder confers upon him, and no more; and any qualifications and limitations which the founder has placed upon his power cannot be exceeded (*a*).

Grammar
Schools Act.

Under the Grammar Schools Act (*b*), visitors of grammar schools having sufficient powers are enabled to exercise them when and as often as they shall deem fit, either by themselves personally or by commission, without being first requested or required so to do, and likewise to direct such returns to be made by the masters of such schools, of the state thereof, of the books used therein, and of such other particulars as they may think proper, and also to order such examinations to be held into the proficiency of the scholars attending the same as to them may seem expedient (*c*). And where their

(*p*) *Att.-Gen. v. Stephens*, 1 Atk. at p. 360.

(*q*) *Ex parte Berkhamstead Free School*, 2 V. & B. 134; *Att.-Gen. v. Smythies*, 2 My. & C. at p. 142.

(*r*) *Att.-Gen. v. Crook*, 1 Keen, 121.

(*s*) *Thomson v. University of London*, 10 Jur. N. S. 669, where the question was whether two gold medals could be given at an examination for the degree of LL.D. See also note to s. 16 of Charit. Trusts Act, 1853, *post*.

(*t*) Per Lord Mansfield in *St. John's Coll., Cambridge v. Tbdington*, 1 Burr. at p. 202; and see *Att.-Gen. v. Talbot*, 1 Ves. Sen. 78.

(*u*) *Philips v. Bury*, 2 T. R. 357, 358.

(*x*) *Green v. Rutherford*, 1 Ves. Sen. 462, 472; *Philips v. Bury*, *supra*.

(*y*) *Philips v. Bury*, 2 T. R. 346, 348.

(*z*) *Ibid.*; *Att.-Gen. v. Price*, 3 Atk. 108.

(*a*) *Philips v. Bury*, *supra*.

(*b*) 3 & 4 Vict. c. 77, *post*, App. I.

(*c*) Sect. 13.

powers are not sufficient, the Court may enlarge them (*d*); and where they have no such powers, the Court may create them (*e*). And it may give visitors power to remove unfit or improper masters (*f*).

Where the statutes of a school founded by charter appeared never to have been observed, they were presumed to have been repealed (*g*). Presumed repeal of statutes.

In *Case of Queen's Coll., Cambridge* (*h*), which was a royal foundation, a practice having prevailed for two centuries and a half of electing two fellows of a county, for which the statutes allowed only one, a dispensation from the Crown authorizing that practice was presumed. Presumed dispensation from Crown in case of royal foundation.

In that case Lord Eldon (*i*), while admitting that no usage could justify a violation of the statutes, thought that it might be taken as evidence of a dispensation from the Crown; and that, as it appeared from the evidence that a form of applying for a dispensation to have a third fellow was known in the college, and as the Crown could dispense with the statute, and by a general dispensation sanction the practice of having two fellows, the usage ought to be referred to a lawful origin.

It has, however, been treated as doubtful whether the Crown, when there is a general visitor, can, in the absence of any reservation of a power to alter the statutes of a college, enlarge the visitatorial power (*k*). How far Crown can dispense with statutes.

The jurisdiction of the visitor is confined to persons upon the foundation of a college. Therefore commoners of a college who merely pay the college for their board are not within the jurisdiction of the visitor, and, if they are expelled by the college, the visitor cannot reverse the decision upon an appeal (*l*). Visitor has no jurisdiction over commoners not on foundation;

Nor has the visitor jurisdiction over persons who are not yet members of an eleemosynary foundation, but merely claim to become so. Thus, where the city of Bristol nominated a scholar to St. John's College, Oxford, and the college refused to admit him, a mandamus was issued to compel his admission, the Court being of opinion that though it was the duty of the visitor to determine matters relating to persons who were of the foundation, he had no power before a person became a member (*m*). or over persons not yet on the foundation;

(*d*) Sect. 14.

(*e*) Sect. 15.

Sen. 418.

(*f*) Sect. 17. Grammar schools are now usually governed by schemes under the Endowed Schools Acts, and in such cases visitatorial power is exercised by the Charity Commissioners: see *ante*, pp. 76, 77.

(*h*) Jac. 1.

(*i*) At p. 34.

(*k*) *St. John's Coll., Cambridge v. Todington*, 1 Burr. at p. 201; *Rex v. Vice-Chancellor of Cambridge*, 3 *ibid.* at p. 1656.

(*l*) *Davison's Case*, cited Cowp. at p. 319. See also *Rex v. Grondon*, Cowp. 315.

(*g*) *Att.-Gen. v. Middleton*, 2 Ves. Sen. 329. See also *Mayor of Hull v. Horner*, Cowp. 102; *Att.-Gen. v. Scott*, 1 Ves.

(*m*) *Rex v. St. John's Coll., Oxford*, 4

or in dispute
between
foundation
and third
parties.

The visitor has no jurisdiction in a dispute between the foundation and third parties.

Procedure of
visitor.

Thus, if the question were as to the execution of an agreement, an application to the visitor would be nugatory; for he could not compel specific performance (*n*).

A visitor is not bound to proceed according to the rules of common law (*o*); but in all cases the forms prescribed by the statutes must be observed (*p*).

Unless there is a general visitation, any question for the visitor's decision should come before him by way of appeal (*q*).

Both upon a general visitation and upon a particular appeal the visitor must proceed *summariè, simpliciter, et de plano, sine strepitu aut figurâ judicii* (*q*), viz., according to mere law and right (*r*).

Must take an
appeal.

If an appeal is exhibited to him, he must take it, and he must inhibit all proceedings against the appellant until the appeal is determined.

Must hear the
parties;

The exercise of visitatorial power is a judicial act, and, like a judge, a visitor cannot determine without hearing the parties concerned (*s*).

but may
decide upon
written state-
ments.

He is not, however, bound to hear the appellants personally, or receive parol evidence. It is sufficient if he gives his decision after receiving the grounds of the appeal and the answer to it in writing (*t*). But he should summon the parties interested to appear before him (*u*).

May admin-
ister oaths.

He can administer an oath and require an answer upon oath, but he must give a convenient time for an answer, and also for the examination of witnesses.

Visitor cannot
be judge in
his own cause.

A visitor cannot be judge in his own cause, unless that power be expressly given to him. A founder indeed may make him so, but such an authority will not be implied. Thus, in *Rex v. Bishop of Ely* (*x*), the question was whether the Bishop of Ely as visitor of Peterhouse College, Cambridge, had a right, under the statutes of

Mod. 260. See also *Rex v. Benchers of Lincoln's Inn*, 4 B. & C. 855.

(*n*) *Rex v. Windham*, Cowp. 377.

(*o*) *Rex v. Bishop of Ely*, 2 T. R. at p. 338; and see *Re Dean of York*, 2 Q. B. 1.

(*p*) Com. Dig. Visitor C.

(*q*) *Ibid.*

(*r*) *Ibid.*

(*s*) *Rex v. Bishop of Ely*, 2 T. R. 290, 336; *Doe v. Gartham*, 8 Moo. 368; *Rex v. Gaskin*, 8 T. R. 209; *Rex v. University of Cambridge*, 8 Mod. 148.

(*t*) *Rex v. Bishop of Ely*, 6 T. R. at p. 477.

(*u*) *Rex v. Bishop of Ely*, *supra*; *Rex v. University of Cambridge*, *supra*. For cases of the hearing of appeals by visitors, see *Spencer v. All Souls' Coll.*, Wilm. Notes, 163; *Watson v. All Souls' Coll.*, 11 L. T. N. S. 166. And as to the effect of long possession in influencing the visitor's decision where the rights are doubtful, see *Downing Coll. Case*, 2 My. & C. 642.

(*x*) 2 T. R. 290; and see *Rex v. Bishop of Chester*, 2 Stra. 797, cited 1 Ves. Sen. at p. 471; and see *Att.-Gen. v. Middleton*, 2 Ves. Sen. at p. 329.

the college, to appoint as master his own nominee, instead of one of two persons nominated by the college, and it was held by the Court of Queen's Bench, upon the principle "that the same person cannot be the visitor and visited," that the power of deciding the question on the construction of the statutes devolved on itself, and it granted a mandamus to appoint one of the two persons nominated by the college.

Where the general visitatorial power is suspended, the jurisdiction vests in the Supreme Court. Thus, where the visitatorial power of a bishop over a college was suspended by his becoming warden (for he could not visit himself), the Court of King's Bench assumed jurisdiction and issued a mandamus to the bishop to admit a fellow of the college (*y*).

Suspension of visitatorial power.

The visitatorial power of the Crown is exercised by the Lord Chancellor (*z*). But it is said that the Crown may also visit by special commissioners (*a*).

Visitatorial power of Crown exercised by Lord Chancellor. Application by petition.

The application to the Lord Chancellor as visitor on behalf of the Crown is made by petition (*b*).

Among the matters not transferred to or vested in the High Court of Justice by the Judicature Act, 1873, is "any jurisdiction exercised by the Lord Chancellor in right of or on behalf of her Majesty as visitor of any college or other foundation" (*c*).

Jurisdiction not transferred to High Court of Justice.

The Lord Chancellor, in the case of an appeal to him as visitor on behalf of the Crown, is not bound to observe any particular form of proceeding; and the parties may offer for his consideration as visitor anything which they may think pertinent and proper (*d*). He will not, however, go into the merits of the petition until he is satisfied that the Crown is in fact visitor (*e*).

Procedure.

If the Crown has any direct interest, the Attorney-General must appear on its behalf (*f*).

Where the Crown is visitor, it will not in general interfere with the discretion vested in electors, as fellows of a college, where it has been exercised *bond fide*.

Discretion exercised *bond fide* not interfered with.

Thus, in *Ex parte Inge* (*g*), where the question was as to the power of a college to reject a candidate for an endowed close fellowship, Lord Brougham said (*h*), with reference to the power of election, "This is a trust vested in certain persons, and to be

(*y*) *Rex v. Bishop of Chester*, 2 Stra. 797; cited 1 Ves. Sen. at p. 471.

(*z*) Co. Lit. 96 a; *Eden v. Foster*, 2 P. Wms. at p. 326; *Rex v. St. Catherine's Hall*, 4 T. R. at p. 244.

(*a*) Com. Dig. Visitor, A.; *Eden v. Foster*, *supra*. See *Anon.*, 12 Mod. 233; Shelf. Mortm. p. 333.

(*b*) *Ex parte Inge*, 2 R. & M. 594; *Re*

Queen's Coll. Cambridge, 5 Russ. 64; *Re University Coll. Oxford*, 2 Ph. 521.

(*c*) Sect. 17, sub-s. 5.

(*d*) *Case of Queen's Coll.*, Jac. 1, 19.

(*e*) *Re Garatung Church Town School*, 7 L. J. O. S. Ch. 169, 172.

(*f*) *Case of Queen's Coll.*, Jac. 1, 19.

(*g*) 2 R. & M. 590.

(*h*) At p. 601.

exercised like all other trusts, in perfect good faith and good conscience; and if those to whom it is committed are found to reject,—which is always a matter of circumstantial evidence, for in each case the examination of the candidate must be recorded,—if they are found to reject candidates who indisputably possess the title contemplated by the founder, upon a mere pretext that they are deficient in learning or morals, the visitatorial power will then interfere and control them. For such conduct would be a fraudulent and unfaithful discharge of their office. But it must be a strong case to entitle the Crown to say they have fraudulently executed the trust, because, if they so acted, they would forfeit their character and fail in the performance of a sacred duty.”

Visitatorial power in case of schools.

The course of education and internal discipline of a school, such as the books to be used in particular forms, or the hours for going to school, will be left to the governors and masters, and it is only where there is any substantial deviation from the principle and purpose of the institution that the visitatorial power may with propriety be called upon to interpose (i).

Exemption from residence.

In one case the Lord Chancellor exempted the master of a hospital from living in the master's house on the ground of ill-health (k).

Application of college revenue.

In *Re Christ Church* (l), the application of part of the unappropriated income of the college to increasing the stipend of a university professorship, the endowment of which was one of the objects of the foundation of the college, received the sanction of the Crown as visitor.

Original eligibility of corporators not inquired into.

It seems that no Court or visitor would be disposed to inquire into the original eligibility of a person who has held the office of governor of a corporation for a long time (m).

Two void elections held not to authorize appointment by visitor.

The circumstance that the electors of a master of a free school have made two elections, declared by the Lord Chancellor, as visitor on behalf of the Crown, to be void, will not authorize the visitor himself to appoint the master. This was the opinion of Lord Eldon in *Att.-Gen. v. Black* (n), where, however, he appointed a person to act in the place of the schoolmaster until a new one should be elected, and directed a reference to the Attorney-General to report what directions or alterations touching the mode and right of election and appointment of a schoolmaster would be fit and proper to be made.

(i) *Att.-Gen. v. Earl of Clarendon*, 17 Ves. 491, 507.

(k) *Re Hospital of St. Mary Magdalen, Colchester*, 7 Jur. 456. As a rule, however, it is the duty of the master to reside at the hospital, in order that he

may personally perform his duties: *Ibid.*

(l) L. R. 1 Ch. 526.

(m) *Att.-Gen. v. Earl of Clarendon*, 17 Ves. at p. 499.

(n) 11 Ves. 191.

The power of the Lord Chancellor does not extend to altering the general constitution of the trust (o). Trusts cannot be altered.

The Lord Chancellor has power to give costs upon petitions to him as visitor on behalf of the Crown. Thus in *Case of Queen's College* (p), Lord Eldon directed the costs of petitions to him as visitor of the college, relative to the election of president, to be paid out of the college funds. Costs.

Questions sometimes arise, whether the visitor of an old foundation has the like power and jurisdiction over a new annexed foundation as he has over the old one. The visitatorial jurisdiction is *forum domesticum*, the private jurisdiction of the founder, and cannot extend further, unless some other person grafts upon it, and by express words or necessary implication subjects the estate or emolument given by him, to the same visitatorial power, and to be governed by the same rules; and then the former visitor is also created visitor by the subsequent founder or donor (q). When a visitor is thus appointed by express words, no difficulty arises. New foundation annexed to old one.

It is, moreover, clearly settled that where a subsequent donor gives an estate to a college, whether legal or equitable, and creates neither a distinct visitor nor a special trust, the estate falls under the power of the general visitor, because it is considered that the donor intended that it should fall under the general statutes and rules of the college, and be regulated with the rest of its property (r).

Most of the old colleges of Oxford and Cambridge are made up (more or less) of fellowships engrafted by indenture, all of which are considered as part of the old body, and therefore subject to the same visitatorial power.

Thus in *Att.-Gen. v. Talbot* (s) two fellowships were annexed by indenture after the original foundation, in respect of one of which a contest arose. Lord Hardwicke held that the question belonged to the general visitor of the college, and that new fellowships engrafted must be subject to the jurisdiction and discipline exercised over the original foundation.

Where, however, a special trust has been declared by the donor Special trust.

(o) *Ex parte Bolton School*, 2 Bro. C. C. 662.

(p) Jac. 1, 47. See *Ex parte Dann*, 9 Ves. 647; *Att.-Gen. v. Master of Catherine Hall, Cambridge*, Jac. at pp. 401, 402; *Re Bedford Charity*, 2 Swanst. at p. 532.

(q) *Green v. Rutherford*, 1 Ves. Sen. at p. 472, per Lord Hardwicke.

(r) See *Green v. Rutherford*, *supra*, at p. 473; *Att.-Gen. v. Flood, Hayes & J. App.* at p. xxxv.; *Ex parte Inge*, 2 R. & M. 596, per Lord Brougham.

(s) 3 Atk. 662; *Green v. Rutherford*, 1 Ves. Sen. 462, 467.

with reference to property given to a college, the jurisdiction of the visitor is excluded.

Thus in *Green v. Rutherford* (u) the testator devised to the college an advowson upon trust on any avoidance to present thereto his nephew, and on the next avoidance, one of his name and kindred, or if there were none such, then to present the senior divine then Fellow of the College. A difficulty arose in determining who was meant by the donor. The college presented the plaintiff; but upon appeal to the Bishop of Ely as visitor, the Bishop required the college to present the defendant. Upon a bill being filed by the plaintiff, praying that the college might be directed to present him, as entitled under the trust in the will, it was held that the visitor had no jurisdiction to determine who should be nominated to the rectory, or to interfere in the execution of the trusts of the will. "A private person," said Strange, M. R. (v), "would undoubtedly be compellable to execute it (*i. e.*, the trust); and it makes no difference, who are the trustees; the power of the Court operating on them in capacity of trustees; and though they are a collegiate body, whose founder has given a visitor to superintend his own foundation and bounty, yet as between one claiming under a separate benefactor and these trustees for special purposes, the Court will look on them as trustees only, and oblige them to execute it under direction of the Court."

Moreover, his Honour said that although the existence of the special trust was sufficient to exclude the jurisdiction of the visitor, there was further in that case an inconsistency between the statutes of the college and the will. "And in all the instances," he added (w), "the visitor, whose judgment must be founded on the statutes, cannot execute the trusts of this will; for that would be departing from the statutes; and the adhering to the statutes would be adding farther circumstances to the trust than the testator prescribed, and making it the founder's will, not his."

Crown visitor, though founder of accession to royal foundation declare to contrary.
Decision of visitor final.

And it seems that if the Crown were visitor of a college, and an accession were made to it by a founder who said there should be no visitor at all, the Crown would be visitor of the new foundation (x).

In all cases where a visitor has given a decision, within his powers, it is final and not examinable at law or in equity (y).

(u) 1 Ves. Sen. 462. See *Att.-Gen. v. Flood*, Hayes & J. App. xxi.

(v) At p. 468.

(w) At p. 469.

(x) *Att.-Gen. v. St. Catherine's Hall*, Jac. at p. 400.

(y) *Dr. Widdrington's Case*, 1 Lev. 23; *Dr. Patrick's Case*, *ibid.* 65; *Rex v. New College, Oxford*, 2 Lev. 14; *Appleford's Case*, 1 Mod. 82; *Parkinson's Case*, 3 Mod. 265; *Rex v. Bishop of Ely*, 2 T. R. at p. 335; *Philips v. Bury*, 4 Mod. 106; *St.*

The visitatorial power is preserved by the statutes which have been passed in relation to charities. Visitatorial power recognized in charity legislation.

By the Grammar Schools Act (*a*), where there is a special visitor appointed by the founder or other competent authority, opportunity is to be given to such visitor to be heard, in such manner as the Court shall think proper, previously to the making of decrees or orders extending the system of education and the right of admission into any school, and establishing schemes for the application of its revenues (*b*); and the consent of the visitors as well as of the patrons and governors of several schools must be obtained before they are united (*c*). Grammar Schools Act.

Under the Charitable Trusts Act, 1853 (*d*), the consent in writing of a special visitor, where there is one, is required to enable the Board of Charity Commissioners to authorize the removal by the charity trustees of a schoolmaster, schoolmistress, or other officer. And by the Charitable Trusts Act, 1860 (*e*), a right of appeal is given to a schoolmaster, or officer, removed by the Board under that Act without the consent of the trustees and the approval of a special visitor (if any). Charit. Trusts Acts.

Where the Board exercises its power of apportioning the benefits of a charity, notice must be given to a special visitor (if any) (*f*).

We have already seen (*g*) that in schemes under the Endowed Schools Acts the Charity Commissioners may provide for the transfer of the visitatorial power to her Majesty, to be exercised by and through the Charity Commissioners; and that a species of visitatorial jurisdiction is provided for by schemes established both under the Endowed Schools Acts and the Charitable Trusts Acts. Endowed Schools Acts.

The power of the Charity Commissioners under 21 & 22 Vict. c. 71 (*h*), to substitute the Bishop of one diocese for the Bishop of another as trustee of charitable trusts, does not extend to affect trusts of a visitatorial or other character exercised over any college, hall, or school under the Universities of Oxford or Cambridge, or the Colleges of Eton, Winchester, or Westminster, or to any endow- 21 & 22 Vict. c. 71.

John's Coll. Cambridge v. Todington, 1 Burr. at p. 200; *Att.-Gen. v. Lock*, 3 Atk. 165; *Att.-Gen. v. Talbot*, *ibid.* at p. 674; *Att.-Gen. v. Governors of Harrow School*, 2 Ves. Sen. 551; *Att.-Gen. v. Master of Catherine Hall*, Jac. at p. 392; *Ex parte Berkhamstead Free School*, 2 V. & B. at p. 137. See *Coveney's Case*, 2 Dyer, 209 a; *Att.-Gen. v. Dedham School*, 23 Beav. 350.

(*a*) 3 & 4 Vict. c. 77, *post*, App. I.

(*b*) Sect. 1.

(*c*) Sect. 9.

(*d*) Sect. 22, *post*.

(*e*) Sect. 8, *post*; and see sect. 14, *post*.

(*f*) Charit. Trusts Amend. Act, 1855, s. 14, *post*.

(*g*) *Ante*, pp. 76, 77. See End. Schools Act, 1869, s. 20, *post*.

(*h*) *Post*, Part III. of this Book.

ments of an eleemosynary or other character, whose foundation trusts are governed by a special Act of Parliament (†).

Control over Visitors.

Prohibition.

If a person assumes to act as visitor without having jurisdiction (*k*), or having jurisdiction exceeds its limits (*l*), or proceeds contrary to his citation, or to the statutes, as by inflicting penalties not warranted by them (*m*), a prohibition lies against him, even although there has been a submission to his jurisdiction as visitor (*n*).

“For in the case of a private, particular, limited jurisdiction, and of Courts proceeding by rules different from the general law of the land, no appearance, answering, or pleading of a party will give jurisdiction to the Court; but if there is a want of jurisdiction in the cause, it may be called in question at any time, even after sentence; which is the case of all prohibitions granted every term by the common law Courts for a nullity of jurisdiction; so that it may be applied for even against the party’s own suit; and the same holds good in a collateral action or suit” (*o*).

If a visitor has jurisdiction, mere informality in his acts is not a sufficient ground for a prohibition. Thus, if he cite a person to appear before him in the capacity of special visitor, instead of in the capacity of general visitor, inasmuch as he has equal jurisdiction in either character, he may proceed upon the citation without being liable to a prohibition (*p*).

If no person appears who claims the visitatorial power, except one who has long exercised it, the Court will not grant a prohibition on the motion of a single fellow of a college, who suggests that the power is in another (*q*).

Mandamus where laws of the land broken.

Although a visitor is the proper judge of the private laws of a college, yet the Courts will interfere where the laws of the land are disobeyed, notwithstanding the visitor.

Thus, in *Rex v. St. John’s College* (*r*), where several fellows did not take the oaths required by 1 Will. & M. c. 8, s. 8, the penalty for which was the avoidance of their fellowships, a mandamus was issued out of the Court of Queen’s Bench to the head of the college and other fellows by which they were commanded to amove them.

(i) Sect. 5.

(k) *Rex v. Bishop of Chester*, 1 W. Bl. 22, 23; *Whiston v. Dean and Chapter of Rochester*, 7 Hare, at p. 558.

(l) *Bishop of Chichester v. Harward*, 1 T. R. 650, 651.

(m) *Bentley v. Bishop of Ely*, 1 Barn. 192.

(n) *Green v. Rutherford*, 1 Ves. Sen.

462, 471; *Re Dean of York*, 2 Q. B. 1.

(o) *Green v. Rutherford*, *supra*, at p. 471.

(p) *Bishop of Ely v. Bentley*, 2 Bro. P. C. 220.

(q) *Martyn v. Archbishop of Canterbury*, Andr. 258.

(r) 4 Mod. 233. See, also, *Rex v. Gower*, 3 Salk. 230.

Where a person is clearly entitled to act as visitor, but either acts improperly or declines to act at all, a mandamus will be issued to compel him to exercise his visitatorial power (s).

Mandamus to compel visitor to act.

There was at one time a question whether a visitor could be compelled by mandamus to receive and hear an appeal (t); there is, however, no doubt now that a mandamus will be granted for that purpose. Thus, in *Rex v. Bishop of Lincoln* (u), where a mandamus was prayed to the Bishop as visitor of Lincoln College, Oxford, to compel him to receive, hear, and determine an appeal, the Court determined that where by the statutes of a college a visitor is appointed, who is to interpret the statutes, and an appeal is lodged with him, the Court will compel him to hear the parties, and form some judgment, though they will not oblige him to go into the merits; for it is sufficient if he decide that the appeal comes too late (x).

Visitor compellable to receive and hear appeals.

A mandamus, however, will never be granted unless it appears clearly that the visitatorial power is lodged in the person to whom it is prayed. For it would be unjust to force a man to exercise a doubtful jurisdiction by mandamus. If he obeys it, he is liable to a prohibition; if he return that he is not visitor, to actions (y).

Mandamus not granted unless visitatorial power clear;

In *Brideoak's Case* (z), the Bishop of Winchester having expelled Brideoak from a fellowship in Winchester College, he applied for a mandamus to compel the bishop to restore him. It did not appear clearly that the bishop was visitor. The Court, therefore, refused the mandamus, but by consent the right was tried by prohibition.

Nor will a mandamus lie to compel an officer, according to the duty imposed upon him by the statutes of the foundation, to execute the sentence of a visitor, as that would amount to an interference with the privileges of the visitor (a).

or to compel officer to execute sentence of visitor.

The object of a mandamus is merely to put the visitatorial power in motion. The Court will not interfere with the exercise of that power. It has consequently refused a mandamus to restore a fellow (b) or chaplain (c) of a college, a sister of a hospital, or Charterhouse boys, bluecoat or other almsmen (d).

Object of mandamus.

(s) *Rex v. Bishop of Ely*, 2 T. R. 290; *Rex v. Bishop of Worcester*, 4 M. & S. 415; *Gunston v. Dars*, 1 West's Rep. t. Hardw. at p. 576; *Rex v. University of Cambridge*, 8 Mod. 148; *Whiston v. Dean and Chapter of Rochester*, 7 Hare, at p. 558.

(t) *Usher's Case*, 5 Mod. 452; *Dr. Walker's Case*, Lee's Ca. t. Hardw. at p. 218.

(u) 2 T. R. 338, n.

(x) See *Rex v. Bishop of Ely*, 5 T. R. 475.

(y) *Rex v. Bishop of Ely*, 1 W. Bl. 52, 58.

(z) Cited 1 W. Bl. 58.

(a) *Rex v. Bishop of Ely*, Andr. 176; and see *Dr. Walker's Case*, Lee's Ca. t. Hardw. 212.

(b) *Parkinson's Case*, 3 Mod. 265; *Case of Warden of All Soul's College*, Sir T. Jones, 174; *Dr. Widdrington's Case*, 1 Lev. 23; *Appleford's Case*, 1 Mod. 82.

(c) *Prohus's Case*, Carth. 168.

(d) *Rex v. Wheeler*, 3 Keb. 360.

"The Court," said Lord Brougham, "could do no more than put by mandamus the visitatorial powers in motion, which might then move in a directly opposite direction to what the Court wished or intended, the visitor being at liberty to pursue his own course, without assigning any reason. The visitor has only to move, and then the case is without review" (e).

Remedy of persons affected by sentence of visitor.

When a person is deprived by a visitor, he may in some cases be able to maintain an action of ejectment (f), or he may, it seems, bring an action against the visitor, if in his sentence he exceeds the jurisdiction conferred upon him by statutes (g); but it is otherwise when he makes a mistake with regard to something within his power.

SECTION II.

JURISDICTION OF THE COURTS.

Origin of jurisdiction of Court of Chancery.

THERE has been some difference of opinion with regard to the origin of the jurisdiction possessed by the Court of Chancery over charities. The better opinion seems to be that that Court had an inherent jurisdiction, apart from that conferred upon it by the statute 43 Eliz. c. 4, dependent upon the right of the sovereign, as *parens patriæ*, by its proper officer, the Attorney-General, to file an information calling upon the several Courts of Justice, according to their respective jurisdictions, to see that right was done to those of its subjects who, as in the case of charities, were incompetent to act for themselves (h).

It has, however, been maintained by others that the jurisdiction of the Court of Chancery originated with the statute 43 Eliz. c. 4 (i), and in *Att.-Gen. v. Bowyer* (k), Lord Loughborough said, "It does not appear, that this Court at that period (before the Statute of Elizabeth) had cognizance upon informations for the establishment of charities. Prior to the time of Lord Ellesmere, as far as the tradition in times immediately following goes, there

(e) *Att.-Gen. v. Archbishop of York*, 2 R. & M. at p. 468.

(f) *Rez v. Bishop of Chester*, 1 Wils. 209.

(g) *Green v. Rutherford*, 1 Ves. Sen. at p. 472.

(h) *Att.-Gen. v. Mayor of Dublin*, 1 Bl. N. S. at pp. 347, 348; and see *Incorporated Society v. Richards*, 1 Dr. & W. 258; *Att.-Gen. v. Newman*, 1 Ch. Ca.

157; *Att.-Gen. v. Brereton*, 2 Ves. Sen. at p. 427; *Att.-Gen. v. Middleton*, *ibid.* at p. 328; *Eyre v. Countess of Shaftesbury*, 2 P. Wms. at p. 119. See also the judgment of Fry, L. J., in *Reg. v. Commissioners of Income Tax*, 22 Q. B. D. at p. 311.

(i) Story's Eq. Jur. 13th ed. §§ 1142—1154.

(k) 3 Ves. Jun. at p. 726.

were no such informations as this, upon which I am sitting; but they made out the case as well as they could by law."

The jurisdiction which the Court of Chancery exercised over charities was, in point of fact, one branch of its general jurisdiction to enforce the execution of trusts. But, inasmuch as charitable trusts are trusts of a public nature, no one is entitled by an immediate and peculiar interest to prefer a complaint for compelling the performance by the trustees of their obligations. It consequently devolves on the Crown, as *parens patriæ*, to protect property devoted to charitable uses. This is the foundation of the right of the Attorney-General to obtain by information the interposition of a Court of Equity (*l*).

Part of
general juris-
diction to
execute trusts.

The Court of Chancery had in every case jurisdiction by the construction of the instrument of foundation, whether such instrument were an Act of Parliament, or a charter, or a deed or will, with or without the assistance of evidence of usage and so forth, to determine the trusts upon which charitable funds and estates were held.

Jurisdiction
to determine
trusts.

The Court had also in every case, as will be seen more fully hereafter (*m*), jurisdiction to enforce the observance of the trusts, and to redress breaches of trusts, and for those purposes to appoint and remove trustees and other officers, and to regulate by means of schemes the application of the charity property.

Enforcement
of trusts.

It had also power, where the objects contemplated by the founder could not be carried into effect, to direct the application of the revenues of the charity, by means of the doctrine of *cy-près*, to promote objects in accordance with the spirit of the original foundation, where actual compliance was, or had become, impossible (*n*).

Application
of revenues
cy-près.

The Court of Chancery had no general power to control a charity established by Act of Parliament, for a Court of Law cannot alter the express provisions of a statute (*o*).

No general
power to
control
charity estab-
lished by
statute,
or by charter.

Nor had it any general jurisdiction to establish charities founded by charter (*p*). A charity so founded must be regulated in the first instance by the charter, and not by application to the Court.

In *Att.-Gen. v. Smart* (*q*) Lord Hardwicke said, "Where there is a foundation for a perpetual charity by the Crown, it is estab-

(*l*) *Wellbeloved v. Jones*, 1 S. & S. at p. 43. See *Att.-Gen. v. Brown*, 1 Swanst. at p. 291; *Att.-Gen. v. Gley*, 1 Atk. 356; *Att.-Gen. v. Compton*, 1 Y. & C. C. C. at p. 427.

(*m*) *Post*, pp. 93 et seq.

(*n*) See *Att.-Gen. v. Sherborne Grammar School*, 18 Beav. at p. 280.

(*o*) *Re Shrewsbury Grammar School*, 1

Mac. & G. at p. 333.

(*p*) *Att.-Gen. v. Smart*, 1 Ves. Sen. 72; *Att.-Gen. v. Middleton*, 2 *ibid.* 327; *Att.-Gen. v. Corporation of Bedford*, *ibid.* 505; *Att.-Gen. v. Governors of Foundling Hospital*, 2 Ves. Jun. 42, 47. See *Att.-Gen. v. Browne's Hospital, Stamford*, 60 L. T. N. S. 288.

(*q*) *Supra*.

lished as well as it can be already, by a higher authority than this Court. This is a foundation by the Crown; and there is a particular direction by the last charter, for the application of the revenue; nor will I make a decree for the establishment of a charity, which is properly regulated by charter from the Crown."

Jurisdiction
as to matters
not expressly
provided for.

But in every case the Court of Chancery had jurisdiction within the lines marked out by the trust to make all necessary provisions as to the regulation and management of the charity, and the application of the funds. This is really a part of its jurisdiction to see that the purpose of the foundation is effected.

Gaps left by
Act.

Thus in the case of a charitable foundation established by statute, although an express provision of the Act cannot be altered, yet the Court has jurisdiction, so to speak, to fill up the gaps, and to regulate, in accordance with the directions of the Act, all matters whether of administration or otherwise which the legislature has left unprovided for (*r*).

Jurisdiction
expressly
given by Act.

And even as regards matters as to which the statute makes express provision, the Court will have jurisdiction if such jurisdiction is given to it by the Act, as where "the words of the Act are equivalent to this, that, whenever it occurs that the assistance of the Court is required in the administration of charity funds, there a jurisdiction is given" (*s*).

Matters not
provided for
by charter.

So, also, in the case of a charity established by charter, the Court had jurisdiction within the lines laid down by the charter to determine matters of regulation and management, to make schemes, and to determine the application of the revenues (*t*).

Accordingly, where the object of the charter was simply to relieve the wants of aged and impotent persons, there was nothing to prevent the Court from determining how the funds should be applied for the attainment of that object (*u*).

The same principle applies where the directions given by the charter are more specific, as where it establishes a charitable foundation, such as a school or a hospital. Here, again, within the limits of the trusts established, the Court exercises jurisdiction to administer and regulate all matters for which the charter does not provide (*x*).

Application
cy-près

The doctrine of *cy-près* is fully considered in Chap. VI. of the present work. It requires, however, some mention here.

(*r*) *Re Shrewsbury Grammar School*, 1 Mac. & G. at p. 333.

(*s*) *Re Shrewsbury Grammar School*, 1 Mac. & G. 324, 331; *Re Bedford Charity*, 5 Sim. 578; *Att.-Gen. v. Moises*, App. III. to this Book, *post*.

(*t*) *Att.-Gen. v. St. Olave's Grammar*

School, C. P. Coop. 267; and see *Re Chertsey Market*, 6 Price, 261.

(*u*) *Clephane v. Lord Provost of Edinburgh*, L. R. 1 H. L. Sc. 417.

(*x*) *Att.-Gen. v. Earl of Mansfield*, 2 Russ. 501; *Berkhampstead School Case*, L. R. 1 Eq. 102.

This principle comes into play where the trusts declared by the founder or founders cannot take effect.

only where trusts cannot take effect. Trusts cannot be altered.

Just as in the case of a charity established by charter or Act of Parliament the provisions of the charter or statute cannot be repealed by the Court, so in the case of charitable trusts created by private individuals, so long as they are capable of being carried into effect the Court has no power to alter them. For the first principle of the execution of trusts is that the intentions of the person who creates them must be observed (y).

"It is true," said Lord Westbury (z), "you cannot substitute one charity for another. You may substitute for a particular charity which has been defined and which has failed, another charity *ejusdem generis*, or which approaches it in its nature and character; but you cannot take a charity which was intended for one purpose and apply it to a purpose altogether different" (a).

If it is true to say that the doctrine of *cy-près*, properly considered, does not authorise an alteration of existing trusts, but only operates where the existing trusts are defunct and can no longer take effect, it would seem to follow that the revenues of a charity established by charter, or by Act of Parliament, might, if the charter or statute had worked itself out and was incapable of further operation, be applied *cy-près* as much as the revenues of a charitable trust created by private individuals.

Cy-près in case of charity established by charter or Act of Parliament.

This, indeed, appears to be the result of the decision in *Clephane v. Lord Provost of Edinburgh* (b), where Lord Westbury said, in reference to a charity established by charter, that although the charitable purpose aimed at by the charter must be kept in view, yet the Court had jurisdiction from time to time to vary the means by which that end was to be attained.

Clephane v. Lord Provost of Edinburgh.

In *Att.-Gen. v. Wyggeston's Hospital* (c), it was held by Lord Langdale that ordinances created under the authority of a charter, and subsequently confirmed by Act of Parliament, might be varied by the Court if in process of time they had become prejudicial to the charity.

Att.-Gen. v. Wyggeston's Hospital.

Similarly, it has been held that where there are no objects remaining of a charitable corporation, the Court may settle a scheme for the appropriation of its revenues. Thus, where a

No objects remaining.

(y) *Att.-Gen. v. Boulbee*, 2 Ves. Jun. at pp. 387, 388; *Att.-Gen. v. Whiteley*, 11 Ves. 241; *Att.-Gen. v. Boucherett*, 25 Beav. at pp. 118, 119; *Philpott v. St. George's Hospital*, 27 Beav. 107. See also *post*, p. 136.

(z) *Clephane v. Lord Provost of Edin-*

burgh, L. R. 1 H. L. Sc. 417, 421.

(a) See also *Att.-Gen. v. Earl of Mansfield*, 2 Russ. 501.

(b) L. R. 1 H. L. Sc. at p. 421.

(c) 12 Beav. 113. See *Re Shrewsbury Grammar School*, 1 Mac. & G. 324; *Berkhamstead School Case*, L. R. 1 Eq. 102.

hospital for lepers had been established by letters-patent, and there was no leprosy in England, and consequently no objects of the charity, the Court held that it had jurisdiction upon information to dissolve the corporation and establish a scheme (*d*).

Extinct
corporation.

And it seems that the Court has similar jurisdiction where the corporation has become extinct (*e*).

Charter
granted sub-
sequently to
foundation.

A distinction has been drawn between a case in which the charter is the instrument of foundation and a case in which the charity has been founded by a private person and a charter has afterwards been granted, not for the purpose of declaring the trusts, but for the purpose of providing machinery for executing the founder's intentions.

Att.-Gen. v.
Dedham
School.

"Where the Crown itself grants a charter of incorporation, or a charter appointing governors, and at the same time that it incorporates them gives them the power to make rules, and all this with respect to a charity founded by somebody else; in that case the Court infers that the Crown does what the Court of Chancery would do by decree in any such case, viz.: that it grants that charter with the view and intention of carrying into effect the views and wishes of the original founder; and accordingly when, as in this case, the Court finds thereafter that those rules and those regulations do not carry into effect the views and wishes of the original founder, this Court interposes to make such a scheme for the purpose of furthering the intentions of the founder as may have been rendered necessary by the altered state of circumstances and the increased civilization of the country" (*f*).

Matters within Cognizance of Visitor.

No jurisdic-
tion as to
matters
within cogni-
zance of
visitor.

In matters relating to the internal regulation of a charity there is a well-established limitation of the jurisdiction of the Courts in the case of charitable foundations which are subject to visitation.

The Courts will not in any case exercise jurisdiction with regard to matters which properly fall within the cognizance of the visitor.

Instances.

Thus, questions as to the dismissal of governors or other corporators (*g*); as to the internal regulation of a school, the erection of

(*d*) *Att.-Gen. v. Hicks*, Highm. Mort. p. 336.

(*e*) *Re Conyers' Free Grammar School*, 10 Hare, App. v. Cf. *Rex v. Pasmore*, 3 T. R. 199, where it was held that in such a case the Crown could grant a new charter; *ante*, p. 71.

(*f*) *Per Romilly, M. R.*, in *Att.-Gen. v. Dedham School*, 23 Beav. at p. 366.

And see *Att.-Gen. v. St. Olave's Grammar School*, C. P. Coop. 267; *Att.-Gen. v. Wyggeston's Hospital*, 12 Beav. 113.

(*g*) *Att.-Gen. v. Earl of Clarendon*, 17 Ves. at p. 498; *Re Bedford Charity*, 5 Sim. 578; and see *Att.-Gen. v. Lock*, 3 Atk. 164, as to the removal of almsmen; *Chelmsford Poor v. Mildmay, Duke*, 83.

buildings, or the appointment of schoolmasters (*h*); or as to whether the usher of a school (*i*), or master of a hospital (*k*), should be in residence or not; or whether the master of a hospital should perform divine service or not (*l*); or how a university should conduct its examinations (*m*); are all matters which the Court will leave to the decision of the visitor.

Even where the election of governors might have been said to have been a fraud on the Court, Lord Eldon declined to remove them until a petition had been presented to him as visitor (*n*).

"This college," said Lord Cottenham, in a case where the Court was asked to make a specific declaration that it was the duty of the master to reside (*o*), "is a corporation with a visitor appointed by the charter, who is to inspect and visit the college and the master and poor, and the state, order, and government of the college. To call the master into residence, if improperly absent, to hear and judge of the excuse he may make for his non-residence, are properly the duties of the visitor."

An action with regard to matters of this kind will be dismissed with costs (*p*), notwithstanding that the visitor (without refusing to act) is willing to concur in all proceedings necessary to introduce such regulations with regard to the management of the charity as the Court may direct (*q*).

Action dismissed though visitor consent.

Where there is a clause in a scheme giving the Charity Commissioners visitatorial powers, the Court will not interfere with regard to matters falling within their cognizance. Thus, where a scheme provided that "any questions affecting the regularity or validity of any proceeding under the scheme shall be determined exclusively by the Charity Commissioners," the Court refused to consider the validity of the election of a governor (*r*).

Visitatorial power reserved by scheme to Charity Commissioners.

Enforcement of Trusts.

The Court of Chancery always had ample jurisdiction to enforce the execution of charitable trusts. If the charity was established by charter or Act of Parliament, it would see that the provisions of

Jurisdiction to execute trusts,

(*h*) *Att.-Gen. v. Magdalen Coll. Oxford*, 10 Beav. 402; *Whiston v. Dean and Chapter of Rochester*, 7 Hare, 532; *Att.-Gen. v. Dulwich Coll.*, 4 Beav. 255.

(*i*) *Ex parte Berkhamstead Free School*, 2 V. & B. 134.

(*k*) *Att.-Gen. v. Smythies*, 2 My. & C. 135.

(*l*) *Att.-Gen. v. Crook*, 1 Keen, 121.

(*m*) *Thomson v. University of London*, 10 Jur. N. S. 669.

(*n*) *Att.-Gen. v. Dixie*, 13 Ves. 519.

(*o*) *Att.-Gen. v. Smythies*, 2 My. & C. at p. 142; and see *Att.-Gen. v. Price*, 3 Atk. 108.

(*p*) *Att.-Gen. v. Middleton*, 2 Ves. Sen. 327.

(*q*) *Att.-Gen. v. Dulwich College*, 4 Beav. 255, 268.

(*r*) *Reg. v. Wilson*, W. N. 1888, 12. See note 1 to sect. 23 of the End. Schools Act, 1869, *post*.

such charter or statute were faithfully observed (s). If it were founded by a private individual or individuals, it would take care that the trusts declared were duly executed. And the jurisdiction of the Court in this respect was not interfered with by the fact that the charity was subject to visitation (t).

and admin-
nister estates.

On this ground the Court had jurisdiction in every case, whether the charity were subject to the jurisdiction of a visitor or not, to see that the estates were properly and advantageously managed, and the revenues properly applied (u). And if the estates were being improperly managed, or the funds improperly administered, it would immediately interfere to stop the improper proceedings (x); and it would also, if necessary, make prospective regulations as to the future management of the estates and application of the revenues, and direct a scheme to be settled (y).

In *Att.-Gen. v. Lock* (z), Lord Hardwicke said: "I agree that where there are governors who are visitors likewise, so far as relates to the estates of this charity, they are subject and accountable to this Court. There are two sorts of authorities here. One as to the management of the estate and revenue; the other as to the management and government of the house. In the latter they are absolute, and not controllable by this Court."

In another case (a), Lord Commissioner Eyre observed: "If the governors established for the regulation of it (a charity established by charter) are not those who have the management of the revenues, this Court has no jurisdiction; and if it is ever so much abused, as far as respects the jurisdiction of this Court, it is without remedy; but if those established as governors have also the management of the revenues, this Court does assume a jurisdiction of necessity, so far as they are to be considered as trustees of the revenue."

Trust for
maintenance
of school, &c.

In the same way, if a college or the dean and chapter of a cathedral be trustees for the maintenance of a free grammar school for the use of the public, or of a school for the instruction in grammar of all persons who may resort to it, the Court of Chancery would,

(s) *Att.-Gen. v. St. John's Hospital, Bedford*, 2 De G. J. & S. 621; *Att.-Gen. v. Wyggeston's Hospital*, 12 Beav. 113; *Att.-Gen. v. Earl of Mansfield*, 2 Russ. 501; *Green v. Rutherford*, 1 Ves. Sen. at p. 468.

(t) *Att.-Gen. v. St. Cross Hospital*, 17 Beav. 435; *Daugars v. Rivas*, 28 Beav. 233; and see *Att.-Gen. v. Magdalen Coll. Oxford*, 10 Beav. 402; *Att.-Gen. v. Dedham School*, 23 Beav. 350.

(u) *Eden v. Foster*, 2 P. Wms. at p. 326; *Att.-Gen. v. Corporation of Bedford*, 2 Ves. Sen. 505; *Att.-Gen. v. Lock*, 3 Atk. 165; *Att.-Gen. v. Governors of*

Foundling Hospital, 2 Ves. Jun. at p. 47; *Att.-Gen. v. Dixie*, 13 Ves. 519; *Att.-Gen. v. Earl of Clarendon*, 17 Ves. 491, 499, 500; *Ex parte Berkhamstead Free School*, 2 V. & B. 134; *Att.-Gen. v. Broune's Hospital*, 17 Sim. 137.

(x) *Att.-Gen. v. Earl of Clarendon*, *supra*; *Ex parte Berkhamstead Free School*, *supra*.

(y) *Ibid.*; *Att.-Gen. v. Smythies*, 2 My. & C. 135.

(z) 3 Atk. at p. 165.

(a) *Att.-Gen. v. Governors of Foundling Hospital*, 2 Ves. Jun. at p. 47.

in exercise of its jurisdiction to enforce the performance of trusts, redress any breach of trust (b).

So also where the relation of trustees and *cestui que trust* existed between a corporation and one of its officers, the Court would interpose to prevent a breach of trust notwithstanding the existence of a visitor. Trust between corporation and officer.

In *Daugars v. Rivaz* (c), the French Protestant Church in London was founded in 1550 by letters-patent of the Crown. The pastor, when elected, was presented to and approved and instituted by the Crown. The governing body had, apart from the charter of incorporation, funds impressed with a trust in favour of the pastor. The governing body dismissed the pastor. It was held by Romilly, M.R., that, notwithstanding the rights of the Crown as visitor, the Court of Chancery had jurisdiction to see to the performance of the trust, and to determine on the validity of the dismissal; and the Court having come to the conclusion that it was not justifiable, granted an injunction to restrain the governing body from hindering the pastor in the exercise of his office.

On the same principle an injunction might be granted to restrain the trustees of a grammar school from improperly removing a master. Schoolmaster.

Where a scheme provided "that the trustees shall have authority from time to time, upon such grounds as they shall at their discretion in the due exercise and execution of the powers and trusts reposed in them deem just, from time to time to remove the master," it was held that a trust was created, and that an improper removal of a master would be restrained by injunction (d).

Where, on the other hand, upon the true construction of the statutes of foundation, the schoolmaster and usher are only officers, appointed by the college or other corporation, and the duty of appointing them is not otherwise annexed to the mere property of the college than by the obligation to pay certain annual sums of money, and is not in the nature of a trust, but an obligation the observance of which, according to the statutes of the founder, is to be regulated and enforced by the visitor, then the breach of duty, whatever it may be, ought to be redressed by the visitor, and not by the Court (e). When officers not *cestuis que trust*.

(b) *Att.-Gen. v. Magdalen Coll. Oxford*, 10 Beav. at p. 409; *Whiston v. Dean and Chapter of Rochester*, 7 Hare, at p. 560.

(c) 28 Beav. 233.

(d) *Willis v. Childs*, 13 Beav. 117. See also *Dummer v. Corporation of Chippenham*, 14 Ves. 245; *Re Phillips' Charity*,

9 Jur. 959; *Re Fremington School*, 10 Jur. 512; and see *Att.-Gen. v. Town of Shrewsbury*, Bunb. 215, and *post*, pp. 224 *et seq.*

(e) *Att.-Gen. v. Magdalen Coll. Oxford*, 10 Beav. at p. 409; *Whiston v. Dean and Chapter of Rochester*, 7 Hare, 532.

Trusts vested in ecclesiastical corporations.

The Court would equally enforce the execution of trusts vested in ecclesiastical corporations.

In *Att.-Gen. v. St. John's Hospital, Bedford* (f), Turner, L. J., said: "That this Court has no power over property simply and purely ecclesiastical, and not affected by any trust, any more than it has power over lay property not so affected, cannot, as I conceive, be doubted; but as little as I think can it be doubted, that if ecclesiastical property be affected by a trust, the power and jurisdiction of this Court to enforce and execute the trust attaches equally as it would attach upon lay property similarly circumstanced. The question, therefore, . . . must, as it seems to me, be not whether the foundation of this hospital was an ecclesiastical or lay foundation,—and I am disposed to think that it was an ecclesiastical foundation—but whether the property belonging to this hospital is or is not subject to a trust."

Trusts vested in civil corporations.

In the same way civil corporations, if, as is often the case, they are trustees for the execution of a charitable trust, are, like individual trustees, subject to the jurisdiction of the Court (g), which will compel them duly to perform their trusts, and to account for any misappropriation of the funds of the charity (h).

Corporations may be divested of trusts.

So corporations constituted trustees have sometimes been, by decrees of the Court of Chancery, divested of their trust for an abuse of it, as other trustees would have been (i).

But the Court will not, in the case of a corporation instituted by charter or Act of Parliament for the purpose of governing a charity, take the jurisdiction out of its hands unless an actual abuse of trust has been committed (k).

General funds of municipal corporations.

The Court of Chancery also had jurisdiction to interfere for the protection of the general property of municipal corporations, which was vested in them upon public trusts (l).

In *Att.-Gen. v. Mayor of Liverpool* (m), Pepys, M. R., said: "Cases were cited to show (what cases were not required to prove)

(f) 2 De G. J. & S. at p. 635. See *Whiston v. Dean and Chapter of Rochester*, 7 Hare, at p. 560; *Daugars v. Rivaz*, 28 Beav. 233; *ante*, p. 69.

(g) *Att.-Gen. v. Governors of Foundling Hospital*, 2 Ves. Jun. at p. 46.

(h) *Att.-Gen. v. Mayor of Exeter*, 2 Russ. 362; *Att.-Gen. v. Corporation of Stafford*, 1 Russ. 547; *Att.-Gen. v. Brewers' Co.*, 1 Mer. 495; *Mayor of Coventry v. Att.-Gen.*, 7 Bro. P. C. 235; *Att.-Gen. v. Governors of Foundling Hospital*, 2 Ves. Jun. at p. 46; and see *Att.-Gen. v. Town of Shrewsbury*, Bunb. 215.

(i) Per Grant, M. R., in *Att.-Gen. v.*

Earl of Clarendon, 17 Ves. at p. 499; *Case of Corporation of Coventry*, temp. Lord Harcourt, cited *ibid.* See also *Att.-Gen. v. Dixie*, 13 Ves. 519; but in that case there was a petition to the Lord Chancellor, as visitor for the Crown, as well as an information.

(k) *Att.-Gen. v. Governors of Foundling Hospital*, 2 Ves. Jun. 42.

(l) *Ante*, p. 70.

(m) 1 My. & C. at p. 201; and see *Att.-Gen. v. Mayor of Carlisle*, 2 Sim. at p. 449; *Re v. Mayor of Liverpool*, 9 A. & E. 435; *Viscount Gort v. Att.-Gen.*, 6 Dow, 136.

that the Court has no jurisdiction over a corporation which has control over its own property. But, although a body having a corporate existence is capable of acquiring and possessing property, and therefore also of disposing of it; if property is held by a corporation as a trustee, if the corporation holds it clothed with public duties, the Court has always asserted its right to interfere.”

This was the case where the Corporation of Dublin were trustees of certain funds for the purpose of supplying the city of Dublin with water (n). So also an information against a corporation, alleging that they were seised of real estates for purposes of public utility, and had sold part and were proceeding to sell the remainder, was maintainable (o). And if a corporation has undertaken the performance of a public trust they cannot divest themselves of the means of fully executing it (p).

A charity established or supported by voluntary contributions stands in the same position as any other charity, so long as there is a fund or property impressed with a charitable trust. If there is, it is immaterial whether the source of it is the subscriptions of a number of people or the donation of one (q). Voluntary contributions.

Where a charity is established by subscriptions, the original subscribers only are the founders, and subsequent subscriptions do not constitute a new foundation, but are accretions to the original one (r).

Just as charitable gifts, where not rendered void by statute, were viewed with peculiar favour by the Court of Chancery (s), so when its jurisdiction was invoked for the regulation of a charity, it would look to the substance and not to the form, and if it saw that relief was required, it would give relief even though not asked for, and would not dismiss the proceedings on account of errors of procedure which in other cases would have been fatal (t). Favour shown to charities.

And Lord Eldon laid it down (u), that upon information “the

(n) *Att.-Gen. v. Mayor of Dublin*, 1 Bli. N. S. 312.

(o) *Att.-Gen. v. Corporation of Carmarthen*, G. Coop. 30; *Att.-Gen. v. Aspinall*, 2 My. & C. 613, where it was held that the ordinary jurisdiction of the Court was not ousted by the special remedies provided in certain cases by sect. 97 of the Municipal Corporations Act, 1835, 5 & 6 Will. IV. c. 76.

(p) *Att.-Gen. v. Corporation of Plymouth*, 9 Beav. 67.

(q) See *Ex parte Pearson*, 6 Price, 214; *Att.-Gen. v. Kell*, 2 Beav. 575; *Att.-Gen. v. Bishop of Manchester*, L. R. 3 Eq. at p. 453; *Strickland v. Weldon*, 28 Ch. D. at p. 430. As to cases where there is no fund impressed with a charitable trust,

see *Anon.*, 3 Atk. 277; *Leslie v. Birnie*, 2 Russ. at p. 119; and *ante*, pp. 16, 17. See also *Brown v. Dale*, 9 Ch. D. 78, where the proceeds of sale of land belonging to a voluntary society, with no rules or provisions as to the disposition of its property, was held to be divisible among the members; and see further n. (d) to s. 62 of the Charit. Trusts Act, 1853, *post*.

(r) *Re St. Leonard, Shoreditch, Parochial Schools*, 10 App. Cas. 304.

(s) *Ante*, p. 28.

(t) *Post*, p. 320; and see *Att.-Gen. v. Flood*, Hayes, 611.

(u) *Att.-Gen. v. Coopers' Co.*, 19 Ves. at p. 194. See *Att.-Gen. v. Jeanes*, 1 Atk. 355; *Att.-Gen. v. Parker*, 1 Ves. Sen. 43.

Court is not only to attend to an actual complaint, but to see whether there is any cause of complaint."

Jurisdiction on Petition and at Chambers.

Jurisdiction
on petition.

Proceedings by information being found cumbersome and expensive, the legislature has from time to time interfered to give the Court a more summary jurisdiction.

Romilly's
Act.

The first Act of this kind was Sir Samuel Romilly's Act (*x*), by which jurisdiction was given to the Court of Chancery to deal with various matters concerning charities upon petition (*y*).

Other Acts.

A similar mode of proceeding was provided by the Grammar Schools Act (*z*), and also by 8 & 9 Vict. c. 70 (*a*). The Trustee Act, 1850, also applies in the case of charities (*b*).

Jurisdiction
in Chambers.

The jurisdiction in Chambers in the case of charities is founded on sect. 28 of the Charitable Trusts Act, 1853 (*c*), by which, in the case of charities of which the gross annual income exceeded 30%, the Chancery judges at chambers were empowered, in cases where the appointment or removal of charity trustees, or any other relief, order, or direction relating to a charity, was required, to give the same relief which might formerly have been given in a suit regularly instituted, or on petition.

Transfer to Chancery Division.

Jurisdiction
transferred to
Chancery
Division.

The jurisdiction of the Court of Chancery with regard to charities has been transferred by the Judicature Act, 1873 (*d*), to the Chancery Division of the High Court of Justice.

Information
abolished.

The procedure by information is now abolished, and procedure by action substituted for it (*e*). This is little else than a change in name.

Palatine and County Courts.

Palatine
Court.

Jurisdiction similar to that conferred by the Charitable Trusts Act, 1853, on the Chancery judges at Chambers, was given by the same Act to the Chancery Palatine Court of Lancaster in the case of charities within its jurisdiction, of which the gross annual income exceeded 30% (*g*).

(*x*) 52 Geo. III. c. 101.

(*y*) See *post*, p. 328.

(*z*) 3 & 4 Vict. c. 77, *post*, p. 334.

(*a*) *Post*, p. 335.

(*b*) *Post*, p. 184.

(*c*) See *post*, p. 337.

(*d*) 36 & 37 Vict. c. 66, s. 34, sub-s. (3).

(*e*) *Post*, p. 315.

(*g*) Charit. Trusts Act, 1853, s. 29, *post*.

In the case of charities of which the gross annual income does not exceed 50*l.*, jurisdiction is given to the County Courts (*h*). County Courts.

Restrictions on Legal Proceedings by Charitable Trusts Acts, &c.

The sanction of the Charity Commissioners is required (*i*) before any "suit, petition, or other proceeding" (*k*) in relation to a charity can be commenced, except where it is an application in a matter actually pending (*l*), or where relief is claimed adversely to the charity (*m*). Sanction of Charity Commissioners.

This sanction is also not required to proceedings instituted by the Attorney-General acting *ex officio* (*n*), or to proceedings relating to institutions coming within the exemptions from the operation of the Act (*o*).

The Charity Commissioners may certify to the Attorney-General cases in which they think proceedings ought to be taken, and the Attorney-General is then, if he thinks fit, to take such proceedings as he considers right (*p*). Charity Commissioners may certify cases to Att.-Gen.

By the Endowed Schools Acts and the City of London Parochial Charities Act, 1883, the powers of the Courts with regard to the making of schemes and the appointment of new trustees are temporarily restricted during the continuance of the powers by those Acts respectively conferred upon the Charity Commissioners (*q*). Endowed Schools Acts, &c.

SECTION III.

JURISDICTION OF THE CHARITY COMMISSIONERS.

Exceedingly extensive powers have been conferred upon the Board of Charity Commissioners by the Charitable Trusts Acts and other statutes. Extensive powers.

They have, in the first place, large powers of inquiry into the condition and management of charities, and of requiring accounts and statements to be rendered by charity trustees and others (*r*). Inquisitorial powers.

(*h*) *Ibid.* s. 32; Charit. Trusts Act, 1860, s. 11, *post*.

(*i*) Charit. Trusts Act, 1853, s. 17, *post*. See generally as to the scope and object of the Charit. Trusts Acts, note (*a*) to sect. 1 of Charit. Trusts Act, 1853, *post*.

(*k*) As to the meaning of these words, see note (*a*) to sect. 17 of the Charit. Trusts Act, 1853, *post*.

(*l*) As to what are matters actually pending, see *ibid*.

(*m*) See note (*g*) to the same section, and note (*a*) to sect. 15 of the Charit. Trusts Act, 1853, *post*.

(*n*) Charit. Trusts Act, 1853, s. 18, *post*.

(*o*) *Ibid.* s. 62, and notes thereto, *post*.

(*p*) *Ibid.* s. 20, *post*.

(*q*) See End. Schools Act, 1874, s. 6; and City of London Parochial Charities Act, 1883, s. 40, *post*.

(*r*) Charit. Trusts Act, 1853, ss. 9—14, 66, *post*; Charit. Trusts Amend. Act, 1855, ss. 6—9, 44, 45, *post*.

Administra-
tive powers.

They have also extensive powers with regard to the regulation and management of charity property. They may authorise sales (*s*), leases (*t*), exchanges (*u*), partitions (*x*), repairs and improvements (*y*), mortgages (*z*), purchases of sites (*a*), redemption of rent-charges (*b*), or the application of the charity funds to any objects which the Board may consider beneficial, and which are not inconsistent with the trusts (*c*).

Judicial
powers.

They have also various other powers,—such as to authorise trustees to remove schoolmasters and other officers of charities (*d*), to sanction compromises (*e*), refer bills of costs for taxation (*f*), and regulate legal proceedings (*g*).

By sect. 2 of the Charitable Trusts Act, 1860 (*h*), the Board are empowered to make such orders as may be made by a judge at chambers, or a County Court, for the appointment or removal of trustees of a charity, or for the removal of a schoolmaster, mistress, or other officer, or for or relating to the assurance, transfer, payment, or vesting of any real or personal estate belonging thereto, or entitling the official trustees of charitable funds, or any other trustees, to call for a transfer of and to transfer any stock belonging to such estate, or for the establishment of a scheme for the administration of a charity.

The Board, however, must notify to the trustees or administrators of the charity (except such as have been privy to the application) (*i*) their intention of exercising such jurisdiction (*j*); and no order may be made with respect to a charity of which the gross revenue shall amount to fifty pounds or upwards, except upon the application of the trustees, or a majority of them, in writing if unincorporated, or under their seal if incorporated, and the Board may not remove any trustee on the ground only of his religious belief (*k*). Nor are they bound to exercise jurisdiction in contentious cases (*l*).

(*s*) Charit. Trusts Act, 1853, ss. 24, 26; Charit. Trusts Amend. Act, 1855, ss. 29, 38.

(*t*) Charit. Trusts Act, 1853, ss. 21, 26; Charit. Trusts Amend. Act, 1855, ss. 29, 38, 39.

(*u*) Charit. Trusts Act, 1853, ss. 24, 26; Charit. Trusts Amend. Act, 1855, ss. 32, 34, 38.

(*z*) Charit. Trusts Amend. Act, 1855, ss. 32, 34. See also Charit. Trusts Act, 1853, s. 23, and notes thereto; and Charit. Trusts Amend. Act, 1855, s. 31.

(*a*) Charit. Trusts Act, 1853, s. 21.

(*b*) *Ibid.*; Charit. Trusts Amend. Act, 1855, ss. 29, 30.

(*c*) Charit. Trusts Act, 1853, s. 27.

(*d*) *Ibid.* s. 25; Charit. Trusts Amend.

Act, 1855, s. 33.

(*e*) Charit. Trusts Act, 1860, s. 15.

(*f*) Charit. Trusts Act, 1853, s. 22; Charit. Trusts Act, 1860, ss. 2, 13 and 14.

(*g*) Charit. Trusts Act, 1853, s. 23; Charit. Trusts Amend. Act, 1855, s. 31.

(*h*) Charit. Trusts Amend. Act, 1855, s. 40.

(*i*) Charit. Trusts Act, 1853, ss. 17, 19, 20.

(*j*) *Post*.

(*k*) Charit. Trusts Act, 1860, s. 4, *post*.

(*l*) Charit. Trusts Act, 1860, s. 3, *post*.

(*m*) *Ibid.* s. 4, *post*.

(*n*) *Ibid.* s. 5, *post*, and see note thereto. See also sects. 6 and 7 of that Act.

A right of appeal by way of petition to the Chancery Division from any order of the Charity Commissioners is given to the Attorney-General or to any person authorised by him or the commissioners (*m*).

The rule in regard to an appeal from the Charity Commissioners is the same as in the case of an appeal from a Court of first instance to the Court of Appeal (*n*). The discretion of the commissioners is not interfered with unless a strong case of mistake or miscarriage is made out (*o*).

The same rule applies in the case of appeals under the Endowed Schools Acts (*p*).

The jurisdiction of the commissioners extends to charities founded and endowed in England or Wales, although the revenues are applied abroad, and, it seems, also to charities founded and endowed abroad if the revenues are applied in England or Wales (*q*).

Their jurisdiction does not, of course, extend to charities exempted from the operation of the Charitable Trusts Acts (*r*).

Charities vested in corporations, who, either solely or jointly with others, are recipients of the benefits thereof, are subject to the authority of the Commissioners (*s*); and words in the Charitable Trusts Acts applying to a person or individual apply also to a corporation, whether sole or aggregate (*t*).

The Charity Commissioners have also power to apportion parochial charities with a gross annual income not exceeding 30*l.*, after a division of parishes (*u*); and also to apportion Roman Catholic charities, partly applicable to superstitious uses, and to apply the part so applicable to lawful charitable trusts (*x*).

The Commissioners are also authorised to receive and consider applications for their advice and direction concerning charities, and persons acting on their advice are indemnified (*y*).

(*m*) Charit. Trusts Act, 1860, s. 8, and notes thereto, *post*; and Charit. Trusts Act, 1869, s. 10, *post*. See also sect. 9 of the Charit. Trusts Act, 1860; and sect. 11 of the Charit. Trusts Act, 1869, *post*; and see *Re Hackney Charities*, 4 De G. J. & S. 588; and *ibid.* 10 Jur. N. S. 941, cited in note (1) to sect. 8 of the Charit. Trusts Act, 1860, *post*.

(*n*) *Re Burnham National Schools*, L. R. 17 Eq. 241. And see *Att.-Gen. v. Bishop of Manchester*, L. R. 3 Eq. 436.

(*o*) *Re Burnham National Schools*, *supra*; *Re Hackney Charities*, 34 L. J. Ch. at pp. 177, 178; *Re Campden Charities*, 18 Ch. D. 310.

(*p*) *Ross v. Charity Commissioners*, 7 App. Cas. at p. 468; *Re St. Leonard*,

Shoreditch, Parochial Schools, 10 App. Cas. 304. See note (a) to sect. 39 of the Endowed Schools Act, 1869, *post*.

(*q*) *Re Duncan*, L. R. 2 Ch. 356.

(*r*) As to these, see sect. 62 of the Charit. Trusts Act, 1853, and notes thereto, *post*.

(*s*) Charit. Trusts Act, 1860, s. 10, *post*.

(*t*) Charit. Trusts Amend. Act, 1855, s. 48, *post*.

(*u*) Charit. Trusts Amend. Act, 1855, ss. 10, 13 and 14, *post*.

(*x*) Roman Catholic Charities Act, 1860, s. 1, *post*.

(*y*) Charit. Trusts Act, 1853, s. 16, *post*.

Arbitration. Questions or disputes among the members of a charity, whether within or not within the operation of the Charitable Trusts Acts, in relation to any office, or the fitness, disqualification, election or removal of a trustee or other officer, or otherwise in relation to the management of the charity, may be referred to the Charity Commissioners, and their award is final, and may be made a rule of Court (z).

Applications to Courts now comparatively rare. The jurisdiction given by the Charitable Trusts Acts to the Charity Commissioners has rendered applications to the Court in regard to matters which can be dealt with by the Commissioners of rare occurrence (a).

Endowed Schools Acts, &c. The Commissioners have also had large additional powers conferred upon them by the Endowed Schools Acts, the Allotments Extension Act, 1882, the City of London Parochial Charities Act, 1883, and the Municipal Corporations Act, 1883.

With regard to these powers reference is made to Part III. of this Book, where all the Acts are set out in full, and the different sections annotated.

(z) Charit. Trusts Act, 1853, s. 64, *post*; Charit. Trusts Amend. Act, 1855, s. 46, *post*.

(a) See Introd. to Part III. of this Book, *post*.

CHAPTER V.

CONSTRUCTION AND ASCERTAINMENT OF TRUSTS.

A GIFT to the schoolmaster of a particular school by name of five pounds yearly, for teaching three boys, has been held not to be a gift to the particular schoolmaster, but to the school itself, for teaching three boys in succession (*a*). Similarly, a gift to the parish church of St. Andrew, Holborn, was construed to be a gift to the parson and parishioners of that parish and their successors for ever (*b*).

Gift to schoolmaster held gift for school.

Gift to parish church.

A gift to the "poorest" of the testator's relations or kindred must, in order to be charitable, be construed to be a gift to such of them as are actually poor (*c*). Poor relations becoming rich, or the representatives of deceased poor relations, must be excluded (*d*).

"Poorest" of a class.

A gift "for the use and benefit of the poorest of my kindred, such as are not able to work for their living, viz., sick, aged, and impotent persons, and such as cannot maintain their own charge," was construed to be a gift for the kindred of the testator, poor according to the definition in the will (*e*). And there being a further direction that in distributing the estate "to the poor charitable uses," poor, aged, and impotent kindred should be chiefly preferred, it was held that the gift was for necessitous and disabled poor, with a preference in favour of kinsmen (*f*).

Where a testator gave lands to a college of a university for the only use, education in piety and learning of the descendants of the brothers and sisters of the testator, and of his two wives, and in default of such to their poor kindred, it was held that descendants claiming the benefit of the gift must become members of and be educated at the college (*g*).

Gift to college for education of testator's descendants.

(*a*) *Cheeseman v. Partridge*, 1 Atk. 436.

(*b*) *Ibid.* at p. 437. See *Att.-Gen. v. Cock*, 2 Ves. Sen. 273; *Re Parker's Charity*, 32 Beav. 654; and cf. cases cited *ante*, p. 8.

(*c*) *Att.-Gen. v. Duke of Northumberland*, 7 Ch. D. 745, overruling the dictum of Wickens, V.-C., in *Gillam v. Taylor*, L. R. 16 Eq. 581. See also *Isaac v.*

Defriez, Amb. 595; *Att.-Gen. v. Price*, 17 Ves. 371.

(*d*) *Mahon v. Savage*, 1 Sch. & L. 111.

(*e*) *Att.-Gen. v. Duke of Northumberland*, *supra*.

(*f*) *Ibid.*

(*g*) *Att.-Gen. v. Sidney Sussex Coll.*, L. R. 4 Ch. 722; see *ibid.* 34 Beav. 654. With regard to the meaning of kindred, see *ante*, p. 6, n. (*r*).

Parishioner.

If the qualification for partaking in a charity is being a "parishioner," that word will be construed in its ordinary sense of a person occupying premises liable to be rated in the parish (*h*).

Immaterial how qualification acquired.

Where the requisite qualification is in fact possessed, the object and mode of its acquirement is immaterial (*i*).

Gift to charitable corporation impressed with trust for charity.

Where a gift is simply made to a charitable corporation, the subject-matter of the gift is at once impressed with a trust for the charitable purposes for which the corporation was created (*j*).

Land may be conveyed to charity in fee without words of limitation.

It seems that when the intention is to constitute a charity to endure for ever, an estate in fee simple will pass without words of limitation, even though the grantees are not a corporation (*k*). The same was the case with wills made before the Wills Act (*l*).

The reason given is, that in the case of charities the Court looks to the intention, and carries that into effect without regard to the form (*k*).

Reparation of building.

Where a bequest is given for the "reparation" of a building, that word is not confined merely to repairing the old building, but may extend to cover the erection of a new (*m*).

Reparation and ornament of church.

In *Re Palatine Estate Charity* (*n*), the meaning of "repairs, ornaments, and other necessary occasions" was discussed, and it was held that the erection of a spire came within those words. It was also held that the salaries of the sexton and verger, so far as their services related to the fabric of the church, might under those words continue to be paid, but not that of the organist or bell-ringer (*o*).

Receipt of Parochial Relief.

Rule as to receipt of parochial relief.

As a rule persons receiving parochial relief are not entitled to the benefit of a charity intended for the poor (*p*).

(*h*) *Etherington v. Wilson*, 1 Ch. D. 160. See further as to the meaning of "parishioner" and "inhabitant," *post*, p. 208.

(*i*) *Etherington v. Wilson*, *supra*.

(*j*) *Incorporated Society v. Richards*, 1 Dr. & W. at p. 294. See also *Att.-Gen. v. Sidney Sussex Coll.*, L. R. 4 Ch. at pp. 730 *seq.*; *Re Douglas, Obert v. Barrow*, 29 Ch. D. 560; and *cf.* *Sonley v. Clockmakers' Co.*, 1 Bro. C. C. 81.

(*k*) *Att.-Gen. v. Corporation of Berwick-upon-Tweed*, Tambl. 239, 246.

(*l*) 7 Will. IV. & 1 Vict. c. 26.

(*m*) *Att.-Gen. v. Wax Chandlers' Co.*, L. R. 6 H. L. 1; *Re Palatine Estate Charity*, 39 Ch. D. 64. See *Re Booth's Charity*, 14 W. R. 761.

(*n*) *Supra*.

(*o*) With regard to the meaning of "ornaments," see *Westerton v. Liddell*, Moore's Rep. (1857) 156; *Phill. Eccles. Law*, vol. i. pp. 920, 924, 932. See also *Woodward v. Makepeace*, 1 Salk. 164.

(*p*) *Att.-Gen. v. Price*, 3 Atk. at p. 110; *Att.-Gen. v. Clarke*, Amb. 422; *Bishop of Hereford v. Adams*, 7 Ves. 324; *Att.-Gen. v. Gutch*, cited Shelf. Mortm., p. 628; *Att.-Gen. v. Corporation of Exeter*, 3 Russ. at p. 396; *Re Sekford's Charity*, 4 L. T. N. S. 321; *Att.-Gen. v. Brandreth*, 1 Y. & C. C. C. 200; *Att.-Gen. v. Corporation of Rochester*, 5 De G. M. & G. 797; *Att.-Gen. v. Leage*, App. III. to this Book, *post*.

This rule is well established, although it has sometimes been followed with reluctance.

In *Att.-Gen. v. Corporation of Exeter* (g); Lord Eldon, without finally pronouncing judgment, threw some doubt upon it. But the case was afterwards heard by Lord Lyndhurst (r), and it was held that it was improper to apply the rent of land given to a municipal corporation for the aid of the poor citizens in paying fee farm rents due from the city, in repairing the gaol, maintaining the prisoners, and for other public purposes.

Att.-Gen. v. Corporation of Exeter.

The reasons for the rule are stated in *Att.-Gen. v. Wilkinson* (s), where Lord Langdale, alluding to gifts for the benefit of the poor, said: "In such cases it was never intended that the charity should directly benefit the rich, although it is true, that you can in no way benefit the poor without at the same time, to a certain extent, relieving the rich, either as to their legal duty or their moral obligations. In some of the cases, the charity funds had been applied in aid of the poor rates, and, by this mode, in relief of those who were bound by law to pay them, and the Court thought it necessary to prevent such an abuse. If an additional gift were made to poor persons who received relief from the parish, there might be no objection to such additional gift; but in some cases which have come before the Court, charitable funds of this description have been so applied, that the poor have received merely parish relief, and no additional assistance has been afforded them: it was to prevent this abuse that the Court thought right to give the charity funds to persons who, but for such gift, would have received no charitable assistance."

Reasons for rule.

In *Att.-Gen. v. Bovill* (t), Lord Cottenham said, that if he had not the decisions to contend with, it appeared to him, with respect to that particular case, that the course would be to select proper objects of the charity, without regard to whether it would operate to the relief of the poor rates or not; for, either directly or indirectly, it must so operate in whatever manner the funds might be applied (u). He nevertheless considered himself bound by the rule.

Att.-Gen. v. Bovill.

In *Att.-Gen. v. Leage* (x), Kay, J., said: "Such a trust (i.e., for the poor), it is well settled, is for such of the poor only as do not

(g) 2 Russ. at pp. 53, 54.

(r) 3 Russ. 396.

(s) 1 Beav. at p. 373. See also *Att.-Gen. v. Clarke*, Amb. 422.

(t) 1 Ph. at p. 768.

(u) Cf. the observations of Lord Denman in *Churchwardens, &c. of St. Nicholas, Deptford v. Sketchley*, 8 Q. B. at p. 405.

(x) App. III. to this Book, post. A recent unreported dictum may be added to the

above list of authorities. In *Re Shaftes's Charity*, reported 3 App. Cas. 872, Lord Selborne said, in the course of argument, "I thought that the usual way of administering such charities (i. e., charities for the poor) was to exclude those in receipt of relief under the poor rates." See also *Re Poplar & Blackwall Free School*, 8 Ch. D. 543.

receive parish help, that is, for those who take no part of the poor's rate."

Scheme refused, as tending to relief of rates.

Upon a similar principle, a proposed scheme was refused on the ground (*inter alia*) that it contemplated objects which were already better provided for by the Industrial Schools Act (*y*), and that the charity ought not to be applied for the relief of rates and taxes (*z*).

Gift in aid of rates.

This rule does not apply where the intention is that the gift shall be applied in aid of the rates, and such a gift is, as we have seen, charitable (*a*). In such a case the income is properly applied in aid of the poor rates (*b*).

Charity for maintaining poor boys not confined to those requiring parish relief.

Where an Act of Parliament directed that the funds of a charity should be applied in maintaining and lodging sixteen poor boys in a charity school, it was held that the trustees were not bound, in electing the poor boys, to confine themselves to those requiring parish relief (*c*).

Misdescription.

Ambiguity in description of institution.

We have seen (*d*) that where a general charitable intention is shown a legacy to a charitable institution inaccurately described does not fail. The Court endeavours, in the first place, to ascertain which was the institution intended (*e*).

Parol evidence.

In a case of this kind, there being a latent ambiguity, extrinsic evidence is admissible; the Court places itself as nearly as possible in the position occupied by the testator, so as to endeavour to ascertain what his intentions were. It accordingly receives evidence as to the testator's connection with, or knowledge of, the rival institutions, as, for instance, that he was interested in and subscribed to one of them (*f*), or that one had not been founded at the time he lived in the neighbourhood (*g*). And an inquiry may be directed to ascertain which society was intended (*h*).

Inquiry.

(*y*) Industrial Schools Act, 1866 (29 & 30 Vict. c. 118); Habitual Criminals Act, 1869 (32 & 33 Vict. c. 99), repealed by the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112).

(*z*) *Re Prison Charities*, L. R. 16 Eq. 129; and see *Att.-Gen. v. Duke of Northumberland*, 5 Times L. R. 237.

(*a*) *Att.-Gen. v. Blizard*, 21 Beav. 233. See also *Att.-Gen. v. Heelis*, 2 S. & S. 67; *Att.-Gen. v. Corporation of Berwick-upon-Tweed*, Tambl. 239; and *ante*, pp. 13 *seq.*

(*b*) *Att.-Gen. v. Blizard*, *supra*; *Att.-Gen. v. Corporation of Berwick-upon-Tweed*, *supra*; *Re St. Botolph Without Bishopsgate Parish Estates*, 35 Ch. D. 142.

(*c*) *Guardians of Canterbury v. Mayor, &c. of Canterbury*, 31 L. J. Ch. 810.

(*d*) *Ante*, p. 34.

(*e*) *Middleton v. Clitherow*, 3 Ves. Jun. 734.

(*f*) *Att.-Gen. v. Hudson*, 1 P. Wms. 674; *Re Kilevert's Trusts*, L. R. 7 Ch. 170; *Re Briscoe's Trusts*, 20 W. R. 365; *Re Fearn's Will*, 27 W. R. 392; *Buxton v. Blakiston*, 2 Times L. R. 293; *Re Bradley, Oldershaw v. Governesses Benevolent Institution*, 3 Times L. R. 668; *Makeoven v. Ardagh*, Ir. R. 10 Eq. 445. See *Bunting v. Marriott*, 19 Beav. 163.

(*g*) *King's College Hospital v. Wheildon*, 18 Beav. 30.

(*h*) *Middleton v. Clitherow*, 3 Ves. Jun. 734.

But where a legacy was given to a society, stated to be in London, which did not exist, evidence was not admitted to show that a society not in London was intended (i).

These cases must be distinguished from those in which there is a gift to a particular society, with some inaccuracy of description; but the ambiguity is not sufficient to let in evidence of intention (k).

Thus, where the gift was to the London Orphan Society in the City Road, it was held that the Orphan Working School in the City Road was intended (l).

In *Smith v. Ruge* (m) there was a legacy to the German Hospital at Dalston, with a direction that it should be laid out in completing the almshouses then erecting in connection with the hospital, but that it might, nevertheless, be lawfully applied to the general purposes of the charity. The German Hospital had no almshouses. There was another charity for foreigners in distress which was building almshouses, but it was not at Dalston. It was held that the German Hospital at Dalston was entitled.

In one case there was a bequest to the Benevolent Institution for delivering poor married women at their own homes. The testatrix had been a member of a society of that name, but it had come to an end before the date of her will. It was held that the legacy was intended for the Royal Maternity Society which had the same objects (n).

Where the gift was to the rector of the parish of New Windsor, and corporation of the borough of New Windsor, and it appeared that there was no rector of New Windsor, but only a vicar, the bequest was given to the vicar and corporation (o).

A legacy to "all and every the hospitals," was held to mean hospitals in the town in which the testatrix resided; and one standing a mile outside was excluded (p).

Where the gift is "to the hospitals of London," London must be construed in a popular sense, and not confined to the City of London. Consequently, no definite boundaries can be laid down; but it must be considered, as regards each institution suggested, whether it is within what the testator would have considered to be London (q).

(i) *Re Clergy Society*, 2 K. & J. 616.

(k) *Re Kilevert's Trusts*, L. R. 7 Ch. 170.

(l) *Wilson v. Squire*, 1 Y. & C. C. C. 654.

(m) 5 Jur. N. S. 905. See, also, as to what is a sufficient description, *Wallace v. Att.-Gen.*, 33 Beav. 384; *Re Adams, Harle v. Adams*, 4 Times L. R. 757, where the question was who was entitled

to a legacy to a particular Presbyterian church; *Makeown v. Ardagh*, Ir. R. 10 Eq. 446.

(n) *Coldwell v. Holmes*, 2 Sm. & G. 31.

(o) *Hopkinson v. Ellis*, 5 Beav. 34.

(p) *Masters v. Masters*, 1 P. Wms. 420.

(q) *Wallace v. Att.-Gen.*, 33 Beav. 384; and see *Ditcham v. Chivis*, 4 Bing. 706; *Beckford v. Crutwell*, 5 C. & P. 242.

Not to contradict express statement of testator.

Where not sufficient doubt to admit evidence.

Smith v. Ruge.

Vicar described as rector.

"All the hospitals."

"Hospitals of London."

Presumption
in favour of
general
hospital.

In the case of a legacy to a hospital, with an erroneous description, there is a presumption of intention on the part of the testator to benefit a general rather than a special hospital. Thus, where the gift was to the "Westminster Hospital, Charing Cross," the Royal Westminster Ophthalmic Hospital was excluded (*r*); and where the gift was to the "Kent County Hospital," which did not exist, the Kent County Ophthalmic Hospital was excluded (*s*).

Pauper
lunatic
asylum.

A pauper lunatic asylum was held not entitled to a legacy to the treasurer of an asylum thereafter to be instituted "for the humane and charitable purposes of that institution" (*t*).

Patent
ambiguity.

Parol evidence is inadmissible in the case of a patent ambiguity, as where there is a blank left in the will (*u*).

Society incor-
porated with
another
society.

Where the society intended to be benefited made over its rights and liabilities to another society, the legacy was paid to the latter (*v*).

And where bequests were given to two societies which, before the death of the testatrix, had become united, both were paid to the consolidated society (*w*).

Conditions of Forfeiture.

Condition of
forfeiture.

Where the person benefited by a charitable gift has done all in his power to fulfil the conditions imposed upon him, although they may not have been literally performed, the Court does not readily construe the gift in such a way as to produce a forfeiture (*x*).

Gift over.

But where there is a gift over on non-observance of certain conditions, effect must be given to it (*y*). In a recent case (*z*), a testator directed that the rents of certain land should be paid to some person to celebrate divine service in the parish church every day in the week for ever; and in case of failure to perform service for more than three days together, the rents were directed to be paid to a hospital. Service not having been performed as required, the gift over was held to have taken effect. Jessel, M. R., said, "It is no answer to say that there was no congregation. A congregation sufficient for saying the prayers is not limited by law to any

(*r*) *Bradshaw v. Thompson*, 2 Y. & C. C. 295.

(*s*) *Re Alchin's Trusts*, L. R. 14 Eq. 230.

(*t*) *Lechmers v. Curtler*, 24 L. J. Ch. 647. See also *Re Davies' Trusts*, 21 W. R. 154.

(*u*) *Baylis v. Att.-Gen.*, 2 Atk. 239.

(*v*) *Re Wilson's Will*, 19 Beav. 594.

(*w*) *Re Joy, Purday v. Johnson*, 60 L. T. N. S. 176.

(*x*) *Re Conington's Will*, 8 W. R. 444,

where a gift was held not to be forfeited by neglect to perform divine service in consequence of its having been found impossible to obtain a congregation, on the ground that upon the construction of the will "neglect" meant "wilful neglect."

(*y*) *Christ's Hospital v. Grainger*, 1 Mac. & G. 460.

(*z*) *Governors of Bethlehem and Bridewell Hospitals v. Ironmongers' Co.*, Jessel, M. R., 4 April, 1881.

number of persons. The minister and his clerk, and the sextoness, would have done very well, or the minister and his clerk would have done very well. There was no occasion to have any one else there. But what the testator required was, that the service should be performed and anybody might have come and attended the church."

An alteration of the trusts effected by a scheme established by competent authority could never cause a forfeiture. The effect of the scheme is to substitute a new set of trusts for those in respect of which the condition of forfeiture was imposed; and the condition of forfeiture must be transferred accordingly, even though it may be inapplicable to the new trusts, and, consequently, cease to be operative (a).

Effect of scheme on condition of forfeiture.

Where a charitable legacy is bequeathed to trustees, with a gift over in case they should decline to execute the trusts, they are, if they accept the trusts, entitled to an absolute transfer of the fund (b).

Trustees absolutely entitled where condition satisfied.

Continuance of Trust.

Property once impressed with a perpetual charitable trust can never revert, nor can the trust cease (c).

Charitable trust once created continues.

Where land belonging to the corporation of Liverpool was set apart under a statute for a burial ground, and by the sentence of consecration the corporation renounced all right to the land, and the burial ground was afterwards closed by Order in Council, it was held that there had been no reverter to the corporation, and that, if necessary, a conveyance by them of the fee simple would be presumed (d).

A question was raised in *Corporation of Newcastle v. Att.-Gen.* (e) whether a person who has voluntarily founded and endowed a charity can afterwards avoid his own act under 27 Eliz. c. 4, by a sale to a purchaser for valuable consideration.

Whether conveyance for charity can be avoided by subsequent conveyance for value.

It was held in that case that where a corporation had voluntarily founded a hospital under 39 Eliz. c. 5, and purchased real estate, and caused it to be conveyed direct to the hospital, it could not

(a) *Re Bacon's Trusts*, Jessel, M. R., 7th Dec. 1878. See also *Christ's Hospital v. Grainger*, 1 Mac. & G. at pp. 464, 465; *Re Parish of Upton Warren*, 1 My. & K. 410, where the first gift was applied *cy-pris*, notwithstanding a limitation over; *Re Trustless of Orchard St. Schools*, W. N. 1878, 211.

(b) *Re Richardson's Will*, 58 L. T. N. S. 45.

(c) See *Att.-Gen. v. West*, 27 L. J. Ch. 789; *Incorporated Society v. Price*, 1 J. &

Lat. 498; *Aylet v. Dodd*, 2 Atk. 238; *Att.-Gen. v. Hospital of St. John, Bedford*, 10 Jur. N. S. 897; *Re Hartshill Endowment*, 30 Beav. 130; *Campbell v. Corporation of Liverpool*, L. R. 9 Eq. 579. See also *post*, p. 244.

(d) *Campbell v. Corporation of Liverpool*, *supra*; *Re St. Pancras Burial Ground*, L. R. 3 Eq. 173.

(e) 12 Cl. & F. at p. 415; see also *S. C. nom. Att.-Gen. v. Corporation of Newcastle*, 5 Beav. at p. 312.

defeat that gift by afterwards selling the land for value. This decision was founded upon the ground that, when a charity has once been founded and endowed, the founder cannot, by any act of his, alter the endowment (*f*). In that case, however, the land was never vested in the corporation, and it is not, therefore, a conclusive authority upon the point now in question (*g*).

It may, however, be observed that if a founder could defeat his own act by a subsequent conveyance for value, means would seem to be provided for defeating the provision of the Mortmain and Charitable Uses Act, 1888 (*h*), that an assurance of land for charity must be without any power of revocation for the benefit of the assurator or any person claiming under him.

Ascertainment of Trusts.

Difficulty of determining trusts.

It frequently happens that there is considerable difficulty in determining the nature of ancient charitable trusts.

In many cases the origin of the trust is lost in obscurity. In others, although the foundation may be known, the instrument of foundation is not in existence, or there are only copies of it which do not agree. In other cases, again, the instrument of foundation is of great age and of doubtful meaning.

Extrinsic evidence.

In all these cases the Court must rely to a greater or less extent on extrinsic evidence.

Origin of charity unknown.

Where the origin of the charity is unknown, evidence of usage is all important for establishing not only the nature but the existence of the trust.

Presumption in favour of long usage.

Where there has been long, open, and uninterrupted usage under a claim of right, the Court will not consider that a series of illegal acts has been committed and acquiesced in through neglect or indifference, but it will presume such an origin as would establish the right, if such an origin be reasonably possible at law (*i*). Even an Act of Parliament may be presumed (*k*).

Trust presumed.

Thus, where there had been a long, continuous, and well-defined usage for certain free inhabitants of a borough to dredge for oysters during a certain period of the year, the Court presumed a charitable trust or condition sufficient to support the right (*l*).

(*f*) *Att.-Gen. v. Corporation of Newcastle*, *supra*, 5 Beav. at p. 312; and see *post*, p. 213.

(*g*) See also *East Greensted's Case*, Duke, 64; *Trye v. Corporation of Gloucester*, 14 Beav. 173, where the point was referred to, but not decided; and see *Dart's Vendors & Purchasers*, 6th ed. p. 1008.

(*h*) Sect. 4, sub-sect. (3), *post*; formerly 9 Geo. II. c. 36.

(*i*) *Goodman v. Mayor of Saltash*, 7 App. Cas. 633.

(*k*) *Att.-Gen. v. Exelme Hospital*, 17 Beav. at p. 390. In *Re Parker's Charity*, 32 Beav. 654, the consent of the ordinary to a bequest for the augmentation of a living was presumed after 100 years.

(*l*) *Goodman v. Mayor of Saltash*, *supra*.

In one case (*m*), Jessel, M. R., said, "It is pretty good evidence of a trust if 105 years' user can be proved." And in another it was held that uninterrupted user for 350 years was sufficient to establish almost conclusively the existence of a charitable trust (*n*).

What length of time sufficient.

And James, V.-C., said (*o*), "The *cestuis que trustent* have been in possession as beneficial owners for 350 years, and now the persons in whom the legal estate is vested come forward and say they are entitled to it, subject to the annual payment of a very few shillings or pounds. If the matter had stood thus, I should have had no hesitation in saying that the lapse of time was conclusive as to the right of the *cestui que trust*. The Court would assume the existence of any deed, instrument, or Act of Parliament, to account for the possession."

Conversely, where a right of presentation to the mastership of a hospital had been exercised for three centuries by a municipal corporation for its own benefit, the Court refused to declare that it was impressed with a charitable trust (*p*).

Trust disproved by usage.

In one case (*q*) a devisee on charitable trusts set up the invalidity of the devise (which had been made more than a hundred years previously) as a defence to an information; but it was held that the onus of showing that no mode of rendering the gift valid had been adopted was on the trustee, and that every presumption would be made in favour of its validity.

Presumption against invalidity under Mortmain Act.

Romilly, M. R., said (*r*): "He (the defendant) says the will is void under the Statute of Mortmain; but there are many modes by which the charitable trust might be valid, and it is not proved that they were not adopted. The defendant suggests that the Attorney-General should prove the enrolment of some deed under the statute; but, even if there were none, I would assume that the heir-at-law disclaimed, and, if necessary, that every successive heir did the same. Will this Court, after this lapse of time, allow the trustee, because no regular enrolled conveyance is produced, to claim beneficially? . . . This Court will, after the time which has elapsed, presume that everything was done which would make the charity good."

Again, where the site of a church was vested by Act of Parlia- Presumption

(*m*) *Bunting v. Sargent*, 13 Ch. D. at pp. 335, 336.

(*n*) *Att.-Gen. v. Mercers' Co.*, 18 W. R. 448; *Unicertainty of Aberdeen v. Irvine*, L. R. 1 H. L. Sc. 289. See also *Re St. Bride's, Fleet Street*, 35 Ch. D. 147, n.; *Re St. Alphage, London Wall*, 59 L. T. N. S. 614; *Re Parish of St. Nicholas Acons*,

Times, 5 March, 1889.

(*o*) *Att.-Gen. v. Mercers' Co.*, *supra*, at p. 449.

(*p*) *Att.-Gen. v. St. John's Hospital, Bedford*, 2 De G. J. & S. 621.

(*q*) *Att.-Gen. v. Moor*, 20 Beav. 119.

(*r*) At p. 121.

of conveyance.

ment in the corporation of London in trust for a parish, and it appeared that for 200 years it had been treated as vested in the rector and churchwardens, a conveyance by the corporation to the rector and churchwardens in trust for the parish was presumed (s).

Freehold subsequently acquired held subject to same trusts as right of pasturage.

Where there had been an ancient grant of pasturage over certain lands to a municipal corporation, and their tenants and the inhabitants of the town, and the corporation subsequently became seised of the fee simple of the lands, but there was no evidence as to how they became so seised, it was held that the soil was subject to the trust in favour of the inhabitants to which the right of pasturage had been subject (t).

As to the terms of trust.

Similarly, the terms and conditions of the trust or foundation will be determined from the usage, and a long and uniform user will be presumed to be in accordance with the original foundation (u).

Where the churchwardens had from time immemorial been seised of a piece of land for the use and repair of the parish church, it was held to be devoted to the repair of the particular church, and that district churches were not entitled to participate (x).

Terms on which trust accepted.

The evidence of contemporaneous transactions and of usage may also be important, as showing the nature and extent of the trust assumed by the persons who accepted a gift (y).

Accession to foundation of college.

This has arisen in cases where an accession has been made to the foundation of a college. No college is bound to accept an accession to its foundation (z). If, however, it does accept it, it must do so on the terms proposed by the donor, unless in the acceptance a new bargain is made for modifications (a).

Acceptance subject to qualifications.

A contract to accept an accession subject to qualifications may be collected from contemporaneous transactions, as evidenced by documents, or as proved by constant usage (b).

Contemporaneous arrangement as to construction.

Similarly, if questions arise upon the instrument of foundation, an arrangement with regard to such questions come to at the time

(s) *Re Parish of St. Nicholas Acons*, Times, 5 March, 1889. Cf. *Att.-Gen. v. Dalton*, 13 Beav. 141; *Att.-Gen. v. Stephens*, 1 K. & J. 724.

(t) *Att.-Gen. v. Corporation of Cashel*, 3 Dr. & W. 294.

(u) *Att.-Gen. v. St. Cross Hospital*, 17 Beav. 435; *Att.-Gen. v. Evelme Hospital*, *ibid.* 366; and see *Att.-Gen. v. Dalton*, 13 Beav. 141; and *Att.-Gen. v. Bishop of Worcester*, 9 Hare, at p. 359, for the evidence on which the Court concluded that a school was a grammar school.

(x) *Re Church Estate Charity, Wandsworth*, L. R. 6 Ch. 296.

(y) *Att.-Gen. v. Drapers' Co.*, 6 Beav. at p. 386.

(z) *Att.-Gen. v. Andrew*, 3 Ves. Jun. 633; *Att.-Gen. v. Master of Catherine Hall*, Jac. at pp. 391, 392; *Att.-Gen. v. Drapers' Co.*, 6 Beav. at p. 386; *Att.-Gen. v. Caius Coll.*, 2 Keen, at p. 163.

(a) *Att.-Gen. v. Master of Catherine Hall*, *supra*; *Att.-Gen. v. Drapers' Co.*, *supra*; *Att.-Gen. v. Caius Coll.*, *supra*.

(b) *Att.-Gen. v. Drapers' Co.*, *supra*, at pp. 386, 387.

the trusts were accepted, and evidenced by contemporaneous instruments, will not be disturbed (c).

And such an arrangement may be supported even where it is evidenced only by constant subsequent usage (d).

Where the instrument of foundation is lost, regard will be had to any copies of it which may exist (e). Copies of lost instrument.

In *Att.-Gen. v. Archbishop of York* (f), the original charter was not in existence, but there were three copies of it. Two of the copies purported to be copies of the original charter *in extenso*, and the third omitted certain trusts found in the other two. It was held that the former must be acted upon, though it appeared that the property of the charity had been afterwards diminished, and it was alleged that in consequence thereof the visitor might, under the authority given by the original charter, have limited the trusts as shown in the third copy. Copies differing from each other.

In other cases where the instruments are lost, regard must be had to usage for the purpose of determining what the nature of the trusts are; as, for example, in whom the right of appointing new trustees is vested (g). Usage.

In the case of old instruments of doubtful meaning, it is a settled rule that extrinsic evidence is admitted for the purpose of clearing up the ambiguity. Ambiguity.

Thus, parol evidence may be employed to enable the Court to ascertain in what sense particular expressions are made use of; as, for example, the expressions, "godly preachers of Christ's Holy Gospel" (h), and "Protestant Dissenters" (i). Ambiguous expressions.

The contemporaneous acts and condition of a donor are of the greatest possible importance for the purpose of placing a construction on a deed of gift executed by him (k); as, for example, for the purpose of determining whether the whole property is impressed with a charitable trust, or whether a surplus belongs to the donees in trust beneficially (l). Contemporaneous acts of donor.

(c) *Att.-Gen. v. Caius Coll.*, 2 Keen, at p. 163.

(d) *Ibid.*

(e) *Att.-Gen. v. Archbishop of York*, 17 Beav. 495; *Att.-Gen. v. Corporation of Cashel*, 3 Dr. & W. 294.

(f) *Supra.*

(g) *Att.-Gen. v. Dalton*, 13 Beav. 141. In that case the Court presumed that the legal estate was in the persons to whom it was purported to be conveyed, notwithstanding certain irregularities. Cf. *Re Parish of St. Nicholas Acons*, Times, March 5, 1889.

(h) *Shore v. Wilson*, 9 Cl. & F. 355.

(i) *Drummond v. Att.-Gen.*, 2 H. L. C. 837. As to what is not sufficient ambiguity to admit evidence of usage, see *Att.-Gen. v. Mayor of Dartmouth*, 48 L. T. N. S. 933.

(k) *Att.-Gen. v. Trinity Coll., Cambridge*, 24 Beav. 383, 399; *Att.-Gen. v. Drummond, supra*; *Att.-Gen. v. Mayor of Dartmouth, supra*.

(l) *Att.-Gen. v. Trinity Coll., Cambridge, supra*; *Att.-Gen. v. Dean and Canons of Windsor*, 8 H. L. C. at p. 402; *University of Aberdeen v. Irvine*, L. R. 1 H. L. Sc. 289.

Early appli-
cation of
fund.

So also the manner in which the donor of the fund, who was the first trustee, conducted himself in distributing it (*m*), the contemporaneous application of the funds (*n*), and contemporaneous deeds relating to the same charity (*o*), are of importance.

Contemporane-
ous acts of
donees.

The contemporaneous acts of the donees are, however, usually of little value, as merely showing their view in accepting the gift (*p*), unless it appear that the trusts were not accepted *simpliciter*, but that at the time of acceptance modifications were bargained for (*q*).

Contemporane-
ous declara-
tion of
trust.

Where the original subscribers were numerous, it was held that a declaration of trust executed by the persons in whom the property was vested at or about the time the funds were raised, must be assumed to embody the intentions of the contributors (*r*).

Usage in case
of ambiguous
instruments.

Evidence of usage is also of very great importance in determining the construction of ancient gifts; and where ancient instruments may bear two constructions, the Court will lean to, if not adopt, that construction which has been supported by usage (*s*). The reason of this is that where the construction of the instrument of foundation is doubtful, it will not be assumed that a long series of breaches of trust has been committed (*t*).

Arrangement
at time of
accepting
trusts.

And, as we have seen, an arrangement made at the time of acceptance, as to the construction of a doubtful instrument, will not be disturbed (*u*).

Evidence not
admissible to
contradict
written
instrument.

But such evidence is only important where there is an absence of an instrument of foundation, or where its language is ambiguous.

Where the instrument of foundation is in existence, and its language is precise, evidence is not admissible for the purpose of contradicting its express provisions (*x*).

Att.-Gen. v.
Clapham.

Thus, where certain Wesleyans, in 1751, purchased a chapel, which was duly conveyed to trustees, upon trust that the appointment of the preachers should be made by John Wesley during

(*m*) *Att.-Gen. v. Brazenose College*, 2 Cl. & F. 295.

(*n*) *Shore v. Wilson*, 9 Cl. & F. at p. 569.

(*o*) *Att.-Gen. v. Anderson*, 57 L. J. Ch. 543. But not subsequent deeds: *Shore v. Wilson*, 9 Cl. & F. 355.

(*p*) *Att.-Gen. v. Trinity Coll., Cambridge*, 24 Beav. at p. 399.

(*q*) *Att.-Gen. v. Master of Catherine Hall*, Jac. at pp. 391, 392; *Att.-Gen. v. Drapers' Co.*, 6 Beav. at p. 386; *Att.-Gen. v. Caius Coll.*, 2 Keen, at p. 163; ante, p. 112.

(*r*) *Att.-Gen. v. Clapham*, 4 De G. M. & G. 591.

(*s*) *Att.-Gen. v. Smithies*, 1 Keen, at p. 308; *Att.-Gen. v. Corporation of Ro-*

chester, 5 De G. M. & G. at p. 822. See *Rex v. Varlo*, Cowp. 248; *Rex v. Osbourne*, 4 East, 327, 333; *Archbishop of York v. Stapleton*, 2 Atk. 136; *Att.-Gen. v. Parker*, 3 Atk. 576; *Att.-Gen. v. Drummond*, 1 Dr. & W. 353; *Att.-Gen. v. Brazenose College*, 2 Cl. & F. at p. 330.

(*t*) *Att.-Gen. v. Sidney Sussex Coll.*, L. R. 4 Ch. at p. 732.

(*u*) *Att.-Gen. v. Caius Coll.*, 2 Keen, at p. 163; ante, pp. 112, 113.

(*x*) *Att.-Gen. v. Gould*, 28 Beav. 485; *Att.-Gen. v. Calvert*, 23 Beav. at p. 263. See also *Shore v. Wilson*, 9 Cl. & F. 355; and particularly the opinions of the judges at pp. 499—578.

his life, and after his death by the trustees. Upon an information in 1853, it was held that parol evidence was inadmissible to prove that the provision in the deed giving the appointment of the preachers to the trustees was inconsistent with the paramount objects of its founders, and would, after the death of John Wesley, clash with the general system of Methodism (y).

And however long continued has been the usage to the contrary, it cannot prevail to contravene the clearly expressed intention of the founder (z).

Usage cannot prevail where contrary origin shown.

"If the Court finds a clear trust expressed on a will, no length of time during which there has been a deviation from it can warrant this Court, as I apprehend, in making a decree in contradiction to such a trust" (a).

No length of time will warrant deviation from clear trust.

With regard to the effect of long-continued usage on the construction of ancient instruments, Lord Eldon said (b) :—

General rule as to effect of usage on construction of ancient instruments.

"Length of time . . . is a very material consideration when the question is, what is the effect and true construction of the instrument. Is it according to the practice and enjoyment which has obtained for more than two centuries, or has that practice and enjoyment been a breach of trust? If it has, we must not scruple to disturb it; but still regard must be had to that circumstance."

And in *Att.-Gen. v. Smythies* (c), Lord Brougham said: "It is impossible, in cases of this description, to lay out of view the length of time during which a certain arrangement has subsisted, and a certain meaning has been given in practice to the instrument of foundation. If, indeed, the practice, though of centuries, has been a breach of trust, doubtless the lapse of time should be no bar. But long adverse enjoyment is not to be thrown out of view in seeking for the true construction of the provisions under which both conflicting parties claim; and a principle of distribution under a known instrument of foundation, if long acquiesced in by all the objects of the bounty from whence the funds proceed, and to effectuate the purposes of which the instrument is framed, ought not, without manifest reason, to be disturbed. The rule of inter-

(y) *Att.-Gen. v. Clapham*, 4 De G. M. & G. 591.

(z) *Att.-Gen. v. St. Cross Hospital*, 17 Beav. 435; *Att.-Gen. v. Clapham*, 4 De G. M. & G. 591; *Att.-Gen. v. West*, 27 L. J. Ch. 789; *Att.-Gen. v. Evelme Hospital*, 17 Beav. 366; *Att.-Gen. v. Gould*, 28 Beav. 485; and see *Shore v. Wilson*, 9 Cl. & F. at pp. 499—578; *Att.-Gen. v. Corporation of Beverley*, 6 De G. M. & G. 256.

(a) *Att.-Gen. v. Corporation of Rochester*, 5 De G. M. & G. at p. 822; *Att.-Gen. v. St. John's Hospital, Bedford*, 2 De G. J. & S. 621; and see *Att.-Gen. v. Corporation of Beverley*, 6 De G. M. & G. at p. 268.

(b) *Att.-Gen. v. Mayor of Bristol*, 2 J. & W. at p. 321. See also *Att.-Gen. v. Corporation of Boston*, 1 De G. & Sm. 519; *Att.-Gen. v. St. Cross Hospital*, 17 Beav. 435.

(c) 2 R. & M. at pp. 749, 750.

pretation from contemporaneous usage and long acquiescence extends over every branch of the law, independently of its connection with matter of limitation and bar. I speak not now of a course of dealing with charitable funds in the absence of evidence respecting the original endowment, or in plain opposition to its provisions. But, where the endowment is forthcoming, its construction may be aided by adverting to the long and uninterrupted acting under it, and acquiescence in that acting."

Religious Restrictions in Non-Religious Charities.

Founder may impose religious restrictions.

Charities, although not primarily established for a religious purpose, as, for example, educational and eleemosynary charities, may be confined to persons holding a particular form of religious belief; and where it was the intention of the founder that they should be so confined, that intention must, unless varied by competent authority, be carried out (*d*).

Presumption against such restriction.

There is, however, a presumption against such an intention, if anything, stronger in the case of an eleemosynary than in the case of an educational charity.

The Court accordingly assumes, in the absence of expressed intention to the contrary, that the founder did not intend, in the one case, that any particular religious doctrine should be combined with the secular education, and in the other, that the benefit of the charity should be confined to persons professing one particular form of religious belief (*e*).

Stronger in case of eleemosynary charity.

In the case of an eleemosynary charity, the presumption against confining it to members of a particular church or sect is so strong that nothing short of an expression of unequivocal import will exclude any class of Dissenters from its benefits, and all evidence as to the peculiar tenets and opinions of the founder is inadmissible as evidence of his intention (*f*).

(*d*) *Att.-Gen. v. Calvert*, 23 Beav. at pp. 254, 255; *Shore v. Wilson*, 9 Cl. & F. at p. 383; *Craigdallie v. Aikman*, 1 Dow, at p. 16; *Broom v. Summers*, 11 Sim. 353; *Att.-Gen. v. Welsh*, 4 Hare, 572; *Att.-Gen. v. Munro*, 2 De G. & Sm. 122; *Att.-Gen. v. Murdoch*, 7 Hare, 445; *Att.-Gen. v. Clapham*, 4 De G. M. & G. 591. For a case where it was held upon the construction of a charter that the charity was for religious purposes, education, and relief of the poor

exclusively, see *Att.-Gen. v. Corporation of Boston*, 1 De G. & Sm. 519.

(*e*) *Att.-Gen. v. Calvert*, 23 Beav. at pp. 256—258; *Att.-Gen. v. Clifton*, 32 Beav. 596. See *Re St. Leonard, Shore-ditch, Parochial Schools*, 10 App. Cas. 304.

(*f*) *Att.-Gen. v. Calvert*, *supra*. See also *Att.-Gen. v. St. John's Hospital, Bath*, 2 Ch. D. 554. For an instance of an eleemosynary charity for the benefit of Dissenters, see *Shore v. Wilson*, 9 Cl. & F. 355, stated *infra*.

Religious Charities.

In many cases a charity is established for purposes purely religious. Dissenting chapels furnish a common instance of this (g).

Charities for religious objects.

Where this is the case two presumptions arise. The first is that the institution was intended for the inculcation or observance of some particular form of doctrine or worship. The second is that the form intended was that professed by the founder or founders (h).

Presumptions in favour of religious restrictions.

A charity for the "worship of God" is *prima facie* a charity for the benefit of the established religion (i).

Charity for "worship of God."

Where the trust is expressed to be for the benefit of Protestant Dissenters generally, Dissenters of all denominations are *prima facie* included (k).

For Protestant Dissenters generally.

Where the will establishing the charity was made before the Reformation, it must be construed as though it had been made after that date, and provisions as to the rites or doctrines of what was then the established religion must be read as referring to the Church of England as established after the Reformation (l).

Will before Reformation construed as though made after.

What the intention of the founder or founders was is a question of fact (m).

Intention of founders a question of fact.

If the intention is expressed in the instrument of foundation, whether a will or deed of trust, no difficulty arises.

Intention expressed.

When, however, it is not so expressed, or is expressed in ambiguous terms, recourse must be had to extrinsic circumstances, such as the known opinions of the founder, the existing state of the law, contemporaneous usage, or the like, for determining who are the objects of the charity, and in what manner the trusts are to be performed.

Not expressed or ambiguous. Extrinsic evidence admitted.

In *Shore v. Wilson* (n), Lady Hewley, by deeds executed in 1704, conveyed estates to trustees upon trust to apply the rents for poor and godly preachers for the time being of Christ's Holy Gospel, and their widows, and for promoting the preaching of and educating young men for the ministry of Christ's Holy Gospel, and for the relief of such godly persons in distress. By deeds executed in 1707, she conveyed other estates to the same trustees,

Shore v. Wilson.

(g) As to the right of Dissenters and others to have the trusts of their places of worship executed, see *ante*, p. 21.

(h) Per Romilly, M. R., in *Att.-Gen. v. Calvert*, 23 Beav. at pp. 255, 256; *Att.-Gen. v. Pearson*, 3 Mer. at p. 410; *Craigdallie v. Aikman*, 1 Dow, 1; and see *Dill v. Watson*, 2 Jones' Ex. R. 48.

(i) *Att.-Gen. v. Pearson*, 3 Mer. at p. 409.

(k) *Att.-Gen. v. Murdoch*, 7 Hare, 445.

(l) *Att.-Gen. v. Calvert*, 23 Beav. at p. 260. Cf. *Glasgow Coll. v. Att.-Gen.*, 1 H. L. C. 800.

(m) Per Lord Lyndhurst in *Shore v. Wilson*, 9 Cl. & F. at p. 390.

(n) 9 Cl. & F. 355. See also *Drummond v. Att.-Gen.*, 2 H. L. C. 837; and, with regard to Presbyterian trusts, *Westwood v. McKie*, 21 L. T. N. S. 165.

partly for the support of old people in an almshouse, and as to the residue upon trusts similar to those contained in the deeds of 1704. She left rules with regard to the persons to be admitted into the almshouse, under which none were to be admitted except such as were poor and pious, and of the Protestant religion. Lady Hewley and all the original trustees were Dissenters, but believers in the doctrines of the Trinity and original sin. In course of time the estates became vested in trustees, of whom the majority were Unitarians, and the rents were applied for the benefit of Unitarians. It was proved that the Unitarians believed in neither of the above-mentioned doctrines.

It was held that for the purpose of determining the objects of the charity under the terms, "godly preachers of Christ's Holy Gospel," "godly persons," and other expressions used in the trust deeds, extrinsic evidence was admissible to show the existence of a sect by which that phraseology was used, and that the testatrix herself belonged to it. And it was also held upon the evidence that neither Unitarians nor members of the Church of England, but Protestant Dissenters only, were entitled to have the benefit of the charity; and that as all the trustees had concurred in the misapplication of the charity funds they must all be removed.

Where a testatrix directed the income of a fund to be paid to a certain minister and his successors, so long as he and they should teach the Gospel of Christ under the name of orthodoxy, and it appeared that the minister named preached during the life of the testatrix to a congregation of Calvinists, or orthodox Independents, it was held that the minister for the time being of that congregation was entitled (o).

Trusts of
Dissenting
chapels.

With regard to Dissenting chapels, Lord Eldon said (p):—"Where a body of Protestant Dissenters have established a trust without any precise definition of the object or mode of worship, I know no means the Court has of ascertaining it, except by looking to what has passed, and thereby collecting what may, by fair inference, be presumed to have been the intention of the founders."

And where the trust is expressed to be for an existing congregation of Protestant Dissenters, the terms of the trust themselves open an inquiry into the character of the congregation (q).

Contemporaneous
declaration of trust.

When the contributors are so numerous as to preclude the possibility of their all concurring in any instrument declaring the

(o) *Att.-Gen. v. Molland*, You. 562.

H. L. C. 837.

(p) *Att.-Gen. v. Pearson*, 3 Mer. at p. 410. See *Drummond v. Att.-Gen.*, 2

(q) *Att.-Gen. v. Murdoch*, 7 Hare, 445. Cf. *Dill v. Watson*, 2 Jones' Ex. R. 48.

trust, a declaration of trust made by the persons in whom the property is vested, at or about the time when the sums were raised, may reasonably be taken as being *prima facie* a true exposition of the intention of the contributors (*r*).

So also contemporaneous deeds relating to the same chapel may be properly referred to (*s*). Contemporaneous deeds.

If the Court can find no other means of ascertaining what form of religious worship was intended, it must investigate the usage of the congregation in respect to it, and if the usage turns out to be such as can be supported, it is the duty of the Court to administer the trust in such a manner as best to establish the usage, considering it as a matter of implied contract between the members of the congregation (*t*). Usage.

An inquiry may be directed for the purpose of ascertaining the objects for which the trusts were created and the usage of the congregation (*u*). Inquiry.

In this case, as in all, extrinsic evidence is only important where the trusts have not been declared (*x*), or where the language of the instrument of foundation is ambiguous (*y*). It is not admissible to contradict the express provisions of an instrument (*z*), or to sanction a breach of trust (*a*). Evidence not admissible to contradict written instrument.

In consequence of the difficulties, which constantly arose, in determining which of several dissenting sects was intended to have the benefit of a charity, and whether, in the execution of the trusts, the principles of the founders had been departed from, the Dissenters' Chapels Act (*b*) was passed, by which, in the case of a place of worship, where there was no express statement in the deed of foundation as to the particular doctrines for which it was to be employed, twenty-five years' usage was made conclusive. Twenty-five years' usage.

By sect. 2 of that Act it is enacted, "that so far as no particular religious doctrines or opinions, or mode of regulating worship, shall, on the face of the will, deed, or other instrument declaring the trusts of any meeting-house for the worship of God by persons dissenting as aforesaid (*i. e.*, from the United Churches of England and Ireland), either in express terms, or by reference to some book or other document as containing such doctrines or opinions or 7 & 8 Vict. c. 45, s. 2.

(*r*) *Att.-Gen. v. Clapham*, 4 De G. M. & G. 591; and see also *ante*, p. 114.

(*s*) *Att.-Gen. v. Anderson*, 57 L. J. Ch. 543.

(*t*) *Att.-Gen. v. Pearson*, 3 Mer. at p. 400; *Drummond v. Att.-Gen.*, 2 H. L. C. 837.

(*u*) *Att.-Gen. v. Pearson*, *supra*, at p. 420, where the form of order is given. See also *post*, p. 213.

(*z*) *Att.-Gen. v. Murdoch*, 7 Hare, 445; and see *ante*, p. 115.

(*y*) *Att.-Gen. v. Gould*, 28 Beav. 485; *Att.-Gen. v. Calvert*, 23 Beav. at p. 263.

(*c*) *Att.-Gen. v. Clapham*, 4 De G. M. & G. 591.

(*a*) *Drummond v. Att.-Gen.*, 2 H. L. C. 837.

(*b*) 7 & 8 Vict. c. 45. The Act was passed in consequence of the difficulties which arose in *Shore v. Wilson*, 9 Cl. & F. 355, *supra*. See *Att.-Gen. v. Bunce*, L. R. 6 Eq. at p. 571.

mode of regulating worship, be required to be taught or observed or be forbidden to be taught or observed therein, the usage for twenty-five years immediately preceding any suit relating to such meeting-house of the congregation frequenting the same shall be taken as conclusive evidence that such religious doctrines or opinions or mode of worship as have for such period been taught or observed in such meeting-house may properly be taught or observed in such meeting-house, and the right or title of the congregation to hold such meeting-house, together with any burial-ground, Sunday or day school, or minister's house attached thereto; and any fund for the benefit of such congregation, or of the minister or other officer of such congregation, or of the widow of any such minister, shall not be called in question on account of the doctrines or opinions or mode of worship so taught or observed in such meeting-house: Provided nevertheless, that where any such minister's house, school, or fund as aforesaid shall be given or created by any will, deed, or other instrument, which shall declare in express terms, or by such reference as aforesaid the particular religious doctrines or opinions for the promotion of which such minister's house, school, or fund is intended, then and in every such case such minister's house, school, or fund shall be applied to the promoting of the doctrines or opinions so specified, any usage of the congregation to the contrary notwithstanding."

Express description required to take case out of Act.

General description insufficient.

In order to take a case out of this section, the particular doctrines or mode of worship required or forbidden must be stated in express terms (c).

The use of a general description, as, for example, the Protestant Dissenting Congregation then of New Row (d), or, having regard to the changes which have taken place in that sect, the use of the term "Presbyterian" (e), is not a sufficient requisition that any particular doctrines or mode of worship shall be taught or observed.

Where, however, under a deed of 1766, property was held in trust for a meeting-house "for Protestant Dissenters of the Presbyterian or Independent denomination to worship in, as the same is now used, free of rent, so long as the laws of Great Britain shall tolerate Protestant Dissenters," it was held that the direction was sufficiently express to take the case out of this Act (f).

Direction expressed in void deed.

It has been held that, even though the deed in which the direction is expressed is void under 9 Geo. II. c. 36 (g), the case is nevertheless taken out of the Act (h).

(c) *Att.-Gen. v. Hutton*, Dr. 480.

(d) *Ibid.*

(e) *Ibid.*; *Att.-Gen. v. Bunce*, L. R. 6 Eq. 568; *Att.-Gen. v. Anderson*, 57 L. J. Ch. 543.

(f) *Att.-Gen. v. Anderson*, *supra*.

(g) Now the Mortmain and Charit. Uses Act, 1888, Part II., *post*.

(h) *Att.-Gen. v. Ward*, 6 Hare, at p. 483.

A congregation of Unitarians, professing to be bound by no human authority, and to be at liberty to change their belief as often as their judgment satisfied them that they were in error, was held not to be deprived of the benefit of the Act by want of fixed doctrine, and to be capable of acquiring a right by twenty-five years' usage (i).

In the absence of any direction taking the case out of the Act, twenty-five years' usage is conclusive (k).

A similar provision with regard to Roman Catholics is contained in the Roman Catholic Charities Act, 1860 (l). By sect. 5 of that Act it is enacted, with regard to charities connected with the Roman Catholic religion, that, where the original trusts are not ascertained by means of a written instrument, consistent usage during twenty years is conclusive evidence of the trusts on which the property was settled.

The task of executing trusts of dissenting chapels has often been found to be one of the greatest difficulty (m), and it has been said that it is the duty of the founders of such trusts to declare their intentions clearly (n).

Many dissenting sects endeavour to secure uniformity in the trusts of their chapels by means of "model deeds" or "forms" of deeds recommended for use.

The model deed is an instrument prepared under the authority and with the approval of the leading members of the sect. It establishes and declares the trusts of a particular chapel, and is duly enrolled, and copies of it are printed and circulated. The trusts of any chapel requiring to be subsequently established can thus be declared by reference to the model deed.

A table of the denominations of dissenters who have model deeds, with the date of such deed, is subjoined—

DENOMINATION.	DATE OF MODEL DEED.
Bible Christians	31 December, 1863 (superseding a previous deed of 8 August, 1831).
Methodist New Connexion	29 December, 1846.
Primitive Methodists	24 March, 1864 (superseding a previous deed of 5 February, 1830).
United Methodist Free Churches (formerly called Wesleyan Reformers) ..	18 August, 1840; 27 January, 1842; 1 November, 1865.
Welsh Calvinistic Methodists	10 August, 1826 (deed poll).
Wesleyan Methodists	3 July, 1832 (Skircoat model deed).

(i) *Att.-Gen. v. Hutton*, 7 Ir. Eq. R. 612.

(k) *Att.-Gen. v. Anderson*, 56 L. J. Ch. at pp. 546, 547.

(l) *Post*, Part III. of this Book.

(m) *Att.-Gen. v. Pearson*, 3 Mer. at p. 397; *Foley v. Wontner*, 2 J. & W. 245.

(n) *Att.-Gen. v. Pearson*, *supra*, at p. 410.

Twenty-five years' usage conclusive.

Roman Catholics.

Difficulty of executing trusts of dissenting chapels.

Dissenters' chapels' model deeds, &c.

Denominations having model deeds.

The Wesleyan Methodists have also two model deeds of schools, dated respectively 16th November, 1848, and 14th June, 1849 (Bilston model deed) (*o*).

Denominations having "forms" of deeds.

The denominations which have no model deeds but which provide "forms" of deeds which they recommend, are the General and Particular Baptists, the Congregationalists or Independents, and the Presbyterian Church of England.

The use of the model deed or form in declaring the trusts of a chapel is, of course, voluntary, but is obviously advisable.

Schemes by reference to model deed.

The Charity Commissioners establish numerous schemes relating to dissenting chapels, in which the trusts are declared by reference to the model deed; not, however, where the deed of trust of the chapel has been made since the model deed, and does not refer to it, there being, in such a case, a presumed intention on the part of the founder that the model deed shall not be made use of (*p*).

(*o*) This is the deed commonly employed when Wesleyan Methodist schools are established by scheme or the Charity Commissioners upon the trusts declared

by the model deed.

(*p*) See further, as to this, n. (*a*) to sect. 15 of the Charit. Trusts Act, 1869, *post*.

CHAPTER VI.

ESTABLISHMENT OF CHARITIES.

SECTION I.

ESTABLISHMENT OF CHARITIES BY SCHEMES, ETC.

Authorities for execution of Charitable Trusts.

THE authorities upon whom the duty of regulating the execution of charitable trusts may devolve are the Crown, the Court, and the Charity Commissioners. Authorities to execute charitable trusts.

The jurisdiction of the Charity Commissioners is dealt with hereafter (a).

The rule as to when the trusts should be executed by the Crown, and when by the Court is as follows : When executed by Crown and when by Court.

Where the property is not vested in trustees, and the gift is to charity generally, and the objects are not to be ascertained by the act of individuals referred to, the charity is disposed of by the sign-manual of the sovereign, who is the disposer of such charities in his character of *parens patriæ* (b). Crown.

Where, on the other hand, the execution of the charitable purpose is committed to trustees with general or particular objects pointed out, the Court and not the Crown is the authority to carry the trusts into effect (c). Court.

The rule is thus stated by Lord Eldon (d), "the general principle thought most reconcileable to the cases is that where there is Rule stated by Lord Eldon.

(a) *Post*, pp. 132 *et seq.*

(b) *Att.-Gen. v. Matthews*, 2 Lev. 167; *Clifford v. Francis*, Freem. 329; *Att.-Gen. v. Syderfen*, 1 Vern. 224; *Da Costa v. De Pas*, Amb. 228. See Lord Hardwicke's note, cited *Att.-Gen. v. Herrick*, Amb. 712; *Moggridge v. Thackwell*, 7 Ves. 36; *Paice v. Archbishop of Canterbury*, 14 Ves. at p. 372; *Att.-Gen. v. Mayor of Galway*, 1 Moll. 95; *Att.-*

Gen. v. Todd, 1 Keen, 803.

(c) *Moggridge v. Thackwell*, *supra*; *Paice v. Archbishop of Canterbury*, *supra*; *Att.-Gen. v. Gladstone*, 13 Sim. 7; *Reeve v. Att.-Gen.*, 3 Hare, 191; *Copinger v. Crehane*, Ir. R. 11 Eq. 429.

(d) *Moggridge v. Thackwell*, 7 Ves. at p. 86; and see *Ommanney v. Butcher*, T. & R. at p. 270.

a general indefinite purpose, not fixing itself upon any object . . . the disposition is in the king by sign manual; but where the execution is to be by a trustee with general or some objects pointed out, there the Court will take the administration of the trust."

Superstitious gift.

Where a charitable gift failed on the ground of its being superstitious, the rule was that the Crown should appoint by sign manual to some valid charitable purpose (*f*).

General charitable objects.

The same was the case where the gift was for an improper charity (*g*), or for charitable uses generally (*h*), or where the charitable objects were uncertain (*i*).

Renouncing executor.

So, also, where the choice of objects was left to an executor who renounced, the administration was held to be under the sign manual of the sovereign (*k*).

Application by Crown rare.

The cases, however, in which administration by the sign manual is now required are very rare.

Not where there is trustee or executor.

It appears from the rule as stated above, that wherever there is a trustee or executor whose duty it is to carry the testator's directions into effect, the Court is the authority to administer (*l*).

Or trust imposed.

Wherever, therefore, a particular trust is imposed the Court will administer, although the trustee may have predeceased the testator (*m*) or disclaimed (*n*).

Hayter v. Trego.

In *Hayter v. Trego* (*o*) it was held that a legacy to a voluntary charitable society, which was dissolved after the testator's death, but before the assets could be administered, should be applied *cy-près* by the Court.

Charitable trust, how executed by Crown.

Where the execution of the trust devolves upon the Crown, the Court merely declares that the gift ought to be disposed of in charity. This is communicated by the Attorney-General to the Queen, and the direction is given under the sign-manual (*p*).

(*f*) *Da Costa v. De Pas*, Amb. 228; *De Garcin v. Lawson*, 4 Ves. 433, n.; *Jones and Cross' Case*, cited nom. *Gates and Jones' Case*, 2 Vern. 266; *Att.-Gen. v. Guise*, *ibid.*; *Cary v. Abbot*, 7 Ves. 490; *Att.-Gen. v. Power*, 1 Ball & B. 145; *De Themmines v. De Bonneval*, 5 Russ. 288; *Att.-Gen. v. Todd*, 1 Keen, 803. As to gifts for superstitious uses being applicable *cy-près*, see *ante*, p. 24.

(*g*) *Att.-Gen. v. Whorwood*, 1 Ves. Sen. 534.

(*h*) *Att.-Gen. v. Herrick*, Amb. 712.

(*i*) *Ibid.*

(*k*) *Att.-Gen. v. Fletcher*, 5 L. J. Ch. 76; see, however, *Att.-Gen. v. Gladstone*, 13 Sim. 7. For other instances of

administration by sign manual, see *Denyer v. Druce*, Taml. 32; *Simon v. Barber*, *ibid.* 14; *Ware v. Att.-Gen.*, *Att.-Gen. v. Londonderry*, *Sanford v. Gibbons*, *Thorley v. Byrne*, and *Re Dickason*, all cited 3 Hare, at p. 195, n.; *Felan v. Russell*, 4 Ir. Eq. R. 701.

(*l*) *Paice v. Archbishop of Canterbury*, 14 Ves. 372; other cases cited *supra*.

(*m*) *Att.-Gen. v. Gladstone*, 13 Sim. 7; but see *Felan v. Russell*, 4 Ir. Eq. R. 701.

(*n*) *Reeve v. Att.-Gen.*, 3 Hare, 191; but see *Denyer v. Druce*, Taml. 32.

(*o*) 5 Russ. 113.

(*p*) See *Da Costa v. De Pas*, Amb. 228.

The procedure by which administration by the sign-manual is obtained, and the form of a letter under the sign-manual giving directions as to the administration, will be found in *Kane v. Cosgrave* (q).

Procedure by sign manual.

Execution of Trusts by the Court.

The Court, when called upon to carry charitable trusts into execution, does not retain them under its control and execute them from time to time as occasion requires, but gives general directions as to the regulation of the charity, leaving it to the trustees to carry its directions into effect (r).

General directions given.

These general directions are given in the form of a scheme for the administration of the charity, which is settled with the approval of the Court. And as a general rule the Court does not part with a fund devoted to charity until a scheme has been settled with regard to it.

Scheme.

Where Scheme not required.

Where a fund is given to a charitable corporation as part of its general funds, or upon the same trusts as those upon which its general funds are held, it is paid without a scheme (s).

Legacy to corporation as part of its general funds.

So, also, where a legacy is given to the treasurer, trustees, or other officers of a charitable institution, even though not a corporation, to become part of its general funds (t).

Treasurer, &c. of charitable institution.

In *Walsh v. Gladstone* (u), a legacy to the president of a college who died during the life of the testator to be applied to its use, was ordered to be paid to the president for the time being without a scheme. "Whether," said Lord Lyndhurst, "a scheme should be directed or not will depend upon the information I may have as to the nature of the institution and the situation of the officer. If there are already existing funds belonging to the institution, and if the president who has the management of those funds is appointed for life, so as to give him a permanent character, the legacy may perhaps be paid to him without referring it to the

Walsh v. Gladstone.

(q) Ir. R. 10 Eq. 211; and see also as to the procedure, *Da Costa v. De Pas*, *supra*; *Att.-Gen. v. Herrick*, Amb. 712.

(r) *Att.-Gen. v. Haberdashers' Co.*, 1 Ves. Jun. 295; *Att.-Gen. v. Solly*, 5 L. J. Ch. 5; *Att.-Gen. v. Haberdashers' Co.*, 15 Beav. at p. 406.

(s) *Society for the Propagation of the Gospel v. Att.-Gen.*, 3 Russ. 142; *Corporation of Sons of Clergy v. Mose*, 9 Sim.

610.

(t) *Wellbeloved v. Jones*, 2 S. & S. at p. 43; *Emery v. Hill*, 1 Russ. 112, where the corporation was Scotch; *Carter v. Green*, 3 K. & J. 591; *Shrewsbury v. Hornby*, 5 Hare, 406; *Makeown v. Ardagh*, Ir. R. 10 Eq. 445; *Re Richardson, Shulldham v. Royal National Lifeboat Institution*, 56 L. J. Ch. 784.

(u) 1 Ph. 290. Cf. *Wellbeloved v. Jones*, *supra*.

Master to settle a scheme. But, suppose the president held his office by a precarious tenure—by an appointment from year to year, for instance—and that the institution was supported by voluntary contributions, then it might be right that a scheme should be settled. If there is a character of permanence in the institution, and in the situation of the officer, the Court will hand it over to him without a scheme, as was done lately in the case of the Venice Charity (*x*). Where a testator, who is a Roman Catholic, leaves money for the use of a Roman Catholic establishment, all I have to do is to see that it is applied to the use of that establishment, and that it is paid into hands in which it will be safe. I have nothing to do with the internal management, discipline, and mode of education in such an institution.”

Trustees of
Roman
Catholic
Chapel.

Trusts differ-
ing from
general pur-
poses of
institution.

Annual sums
to be dis-
tributed.

A legacy to a Roman Catholic chapel may similarly be paid to the trustees of the chapel (*y*).

But where the legacy is not intended to form part of the general funds of the institution, but is given for charitable objects differing from those to which the general funds of the institution are devoted, the Court does not allow it to be paid without a scheme (*z*).

Where annual sums are given to be distributed in charity, at discretion, by persons willing to act, a scheme is not directed (*a*); any of the parties being left at liberty to apply as there may be occasion (*b*).

Waldo v.
Cayley.

In *Waldo v. Cayley* (*c*), where a moiety of the income of a fund was directed to be laid out in relieving distressed persons, giving a preference to poor relations, Grant, M. R., said (*d*): “In a case in which there is so great a latitude of description as in this will, and it is not a residue or a sum in gross that is, once for all, to be distributed, but part of an annual and temporary income to be disposed of from year to year, according to a discretion to be exercised every year, and possibly every day, it seems very difficult for the Court to take upon itself the direction and management of the fund so to be applied. A scheme must be laid before the master every year: for the intention was, not that the charitable fund should be applied during his whole life in one fixed, uniform,

(*x*) *Cockburn v. Raphael*, L. C., 9 May, 1842, not reported.

(*y*) *De Windt v. De Windt*, 23 L. J. Ch. 776.

(*z*) *Wellbeloved v. Jones*, 1 S. & S. 40, 43; *Corporation of the Sons of the Clergy v. Moss*, 9 Sim. 610. See *Re Richardson*, *Shuldham v. Royal National Lifeboat Institution*, 56 L. J. Ch. 784.

(*a*) *Waldo v. Cayley*, 16 Ves. 206; *Horde v. Earl of Suffolk*, 2 My. & K. 59; *Powercourt v. Powercourt*, 1 Moll. 616; *M'Call v. Atherton*, 12 Jur. 1042; 528; *Re Lea, Lea v. Cooke*, 34 Ch. D. 528.

(*b*) *Horde v. Earl of Suffolk*, *supra*.

(*c*) 16 Ves. 206.

(*d*) At p. 211.

and invariable manner, but that it should be applied, from time to time, as proper objects presented themselves for the exercise of her discretion."

So, also, where the income of a fund was directed to be paid to the incumbent of a church so long as he permitted the sittings to be occupied free (e).

And the same is usually the case where the fund, although a capital sum, is made immediately distributable (f). A scheme is, however, in this case sometimes directed (g). Fund for immediate distribution.

The recent case of *Re Lea, Lea v. Cooke* (h), illustrates both classes of cases. There a legacy was given, by name, to the general superintendent of the Salvation Army, which was an unincorporated religious society under the absolute control of the superintendent, "for the spread of the gospel"; and the balance of the income of another fund, remaining after certain specified payments, was bequeathed in the same way. It was held that no distinction could be made between the capital legacy and the legacy of the surplus income, and that both ought to be paid to the superintendent without a scheme. Re Lea, Lea v. Cooke.

Where the fund was small, and all that had to be done was to divide it among certain charities, a scheme was not required, but a reference to chambers was directed to apportion the fund (i). Reference to chambers to apportion fund.

The Court has no power to settle a scheme with regard to a charitable trust which is to be executed abroad. The administration of a charity in a foreign country must be left to the laws of that country (k). Charity out of jurisdiction.

A bequest to a charity out of the jurisdiction, as in Scotland (l), Ireland (m), India (n), or any foreign country (o), is usually ordered to be paid to the trustees whom the founder has named, or to the governing body of the charity; or, if it is a corporation, then to the corporation, or persons authorized by them to receive it. To whom legacy paid.

Where there was a bequest to executors for establishing a

(e) *Re Randall, Randall v. Dixon*, 38 Ch. D. 213.

(f) *Re Barnett*, 29 L. J. Ch. 871, where the gift was to the minister or ministers of a Unitarian chapel, to be applied as he or they should think fit towards the support of Unitarians; *Re Lea, Lea v. Cooke*, 34 Ch. D. 528.

(g) *Att.-Gen. v. Stepney*, 10 Ves. 22; *Baker v. Sutton*, 1 Keen, 224. See *Re Stanes' Will*, 21 L. T. 261.

(h) *Supra*.

(i) *Re Hyde's Trusts*, W. N. 1873, 202.

(k) *Att.-Gen. v. Lepine*, 2 Swanst.

181; *New v. Bonaker*, L. B. 4 Eq. 655. See *Mayor of Lyons v. Adv.-Gen. of Bengal*, 1 App. Cas. 91, 110.

(l) *Provost of Edinburgh v. Aubery*, Amb. 236; *Att.-Gen. v. Lepine*, 2 Swanst. 181; *Forbes v. Forbes*, 18 Beav. 552; *Emery v. Hill*, 1 Russ. 112.

(m) *Collyer v. Burnett*, Tam. 79.

(n) *Mitford v. Reynolds*, 1 Ph. at p. 197; *Mayor of Lyons v. East India Co.*, 1 Moo. P. C. C. 175.

(o) *Collyer v. Burnett*, Tam. 79; *Martin v. Paxton*, cited 1 Russ. 116; *Minet v. Vulliamy*, *ibid.* 113, n.; *Att.-Gen. v. Fraunces*, W. N. 1866, 280.

college in an independent Indian State, the Court refused to hand it over to the Governor-General of India, on the ground that he was not a person whom the testator had pointed out as the hand to receive the fund, and that there was nothing to show that he could carry the testator's intention into effect (*p*).

Funds secured where there are no trustees.

Nevertheless, where there is no hand to receive the funds, the Court, although it will not see to the administration of a foreign charity, will secure the funds by ordering them to be carried over to a separate account, and the dividends only to be paid to the person named in the will, subject to an account of their application.

In *Att.-Gen. v. Sturge* (*q*), a testatrix directed £1000 to be paid to the consular chaplain at Genoa (naming him), for the support of a school. The chaplain being dead, the legacy was carried to a separate account, and the dividends paid to the consular chaplain for the time being, he rendering periodically to the judge at chambers and to the Attorney-General an account of its application.

Reference to foreign Court.

In two cases of bequests for charities in Scotland, the Court has directed a reference to the Court of Session to settle a scheme for the administration of the fund, and in the meantime has retained it under its control (*r*).

Who authorized to make application.

The Attorney-General, and not a disclaiming executor, is the person to whom liberty to apply to the Scotch Court should be given (*s*).

Where Scheme required.

Scheme usually directed where Court executes trusts. Where trustees have unlimited discretion.

Where the Court takes upon itself the execution of the trusts (*t*) a scheme is usually directed to be settled.

A scheme may be directed even though an unlimited discretion as to distribution is left to the trustees.

"Where a residue is to be applied, the Court frequently directs a scheme, even where an unlimited discretion as to distribution is left to a trustee, and where consequently a scheme can answer no purpose but to show that the whole fund is applied to the proper objects" (*u*).

Discretion not

The scheme will not, in such a case, interfere with the discretion

(*p*) *Mayor of Lyons v. East India Co.*, 1 Moo. P. C. C. 176.

(*q*) 19 Beav. 597. See, also, *Att.-Gen. v. Lepine*, 2 Swanst. 181; *Att.-Gen. v. Stephens*, 3 M. & K. 347.

(*r*) *Forbes v. Forbes*, 18 Beav. 552; *Re Fraser, Yeates v. Fraser*, 22 Ch. D. 827.

(*s*) *Re Fraser, Yeates v. Fraser*, *supra*.

(*t*) *Paice v. Archbishop of Canterbury*, 14 Ves. 364; *Waldo v. Cayley*, 16 Ves. at p. 211. See *Baylis v. Att.-Gen.*, 2 Atk. 240, n.; *Doyley v. Doyley*, 7 Ves. 58, n.; *Wellbeloved v. Jones*, 1 S. & S. 40. (*u*) Per Grant, M. R., in *Waldo v. Cayley*, 16 Ves. at p. 211. See *Att.-Gen. v. Steyney*, 10 Ves. 22.

of the trustees (x). But even though trustees have unlimited discretion, they will be controlled if they act improperly (y).

interfered with.

Where there is no hand to execute the trusts, as where the trustees are dead or decline to act (z), a scheme must be directed.

No hand to execute trusts.

So, where the gift is in general terms, no particular objects being specified (a).

Indefinite gift.

And a scheme is usually required where a charitable fund is applied *cy-près* (b), unless the *cy-près* principle is only made use of to vary a point of detail (c).

Where *cy-près* application necessary.

Schemes may also be directed in various cases, even though it may not be necessary to administer a fund *cy-près* (d); as, for instance, where there has been misapplication on the part of the persons administering the charity (e), or where increased income requires to be dealt with (f), or where, although there has been no misapplication, it is for any reason deemed advisable to regulate the administration of the charity (g).

Other cases.

In cases where a charity is regulated by an Act of Parliament or charter, the Court may, under certain circumstances, establish a scheme. Thus, it will do so where jurisdiction is expressly given to it by the statute (h), or in regard to matters which are unprovided for by the statute or charter (i). So, also, where the charter has been granted subsequently to the original foundation, and merely by way of machinery for carrying out the founder's intentions (k); or where the corporation created by the charter has become extinct (l), or its objects impossible to be carried out (m).

Charity regulated by Act of Parliament or charter.

(x) *Att.-Gen. v. Glegg*, Amb. 584; *Bennett v. Honeywood*, Amb. at p. 710; *Johnston v. Swann*, Amb. 585, n.; *Jemmit v. Verril*, *ibid.*

(y) *Att.-Gen. v. Glegg*, *supra*; and see *Att.-Gen. v. Sherborne Grammar School*, 18 Beav. 256.

(z) *Reece v. Att.-Gen.*, 3 Hare, 191; *Att.-Gen. v. Gladstone*, 13 Sim. 7; *Re Stanes' Will*, 21 L. T. 261; *ante*, p. 32.

(a) *Att.-Gen. v. Clarke*, Amb. 422; and see *ante*, p. 29.

(b) *Incorporated Society v. Price*, 1 J. & Lat. 498; *Att.-Gen. v. Mayor of London*, 3 Bro. C. C. 171; *Att.-Gen. v. Glym*, 12 Sim. 84; *Biscoe v. Jackson*, 35 Ch. D. 460; *Martin v. Margham*, 14 Sim. 230.

(c) See *Re Richardson's Will*, 58 L. T. N. S. 45.

(d) See *Att.-Gen. v. Skinners' Co.*, Jac. 629, a case of regulating an ancient charity; *Att.-Gen. v. St. Olave's Grammar School*, C. P. Coop. 267; *Att.-Gen. v. Glasgow Coll.*, 2 Coll. 665, where there was

an inquiry for a scheme for supplying the Episcopal Church in Scotland with qualified ministers.

(e) *Att.-Gen. v. Coopers' Co.*, 19 Ves. 186.

(f) *Att.-Gen. v. Earl of Winchelsea*, 3 Bro. C. C. 373; *Att.-Gen. v. Tonna*, 2 Ves. Jun. 1; *Att.-Gen. v. Barham*, 4 L. J. Ch. 128; *Att.-Gen. v. Solly*, 5 L. J. Ch. 5; *Att.-Gen. v. Caius Coll.*, 2 Keen, 150; *Att.-Gen. v. Ladyman*, C. P. Coop. 180; *Re Kingsbridge School*, 4 Madd. 479; *Att.-Gen. v. Louth Free School*, 14 Beav. 201.

(g) *Att.-Gen. v. Dedham School*, 23 Beav. 350.

(h) *Re Shrewsbury Grammar School*, 1 Mac. & G. at p. 333.

(i) *Ibid.*

(k) *Att.-Gen. v. Dedham School*, *supra*; *Att.-Gen. v. Wyggeston's Hospital*, 12 Beav. 113; and see *ante*, p. 92.

(l) *Re Conyers' School*, 10 Hare, App. v.

(m) *Att.-Gen. v. Hicks*, High. Mortm. p. 336; see *ante*, pp. 91, 92.

Regard to
wishes of
donor.

In settling a scheme attention may properly be paid to wishes expressed in an unattested codicil (*o*), or to charitable bequests contained in another part of the will (*p*), or to other gifts for a similar purpose (*q*).

In one case the minister of a meeting-house and his successors were appointed by the donor governors of a charity, and it was held that in settling a scheme attention would be paid to the donor's wishes, although, in consequence of the minister not being a corporation, the result would be that the donor's intention would be defeated (*r*).

Liberal spirit
should pre-
vail.

In settling a scheme for the regulation of a local hospital, it was said that it was desirable that a liberal spirit, and not a mere local view of questions, should prevail (*s*).

Alteration of Schemes.

Alteration of
schemes.

Where a scheme has been improperly made, as where it makes an unfair division among the objects of the charity, the Court will direct it to be altered (*t*).

Change of
circumstances.

And schemes are constantly altered, and new schemes established, when change of times and circumstances requires (*u*).

Practice of
Court of
Chancery.

The Court of Chancery was in the constant habit of altering schemes settled under its decrees. And this it would do whether the scheme had been settled under its general jurisdiction, or was made by the Commissioners of Charitable Uses under the statute 43 Eliz. c. 4, and confirmed by the Lord Chancellor (*x*).

Alteration of
charter.

The Court will even alter a charter, where that is in effect a scheme for the regulation of the charity (*y*).

Duty of
Att.-Gen.

If the Attorney-General is satisfied that a scheme does not

(*o*) *Att.-Gen. v. Madden*, 2 Con. & L. 519.

(*p*) See *Mayor of Lyons v. Adv.-Gen. of Bengal*, 1 App. Cas. at p. 114.

(*q*) *Att.-Gen. v. Goldsmiths' Co.*, C. P. Coop. 292.

(*r*) *Att.-Gen. v. Lee*, 4 Ir. R. Eq. 84. See also *Att.-Gen. v. Power*, 1 Ball & B. 145.

(*s*) *Re Sekforde's Charity*, 4 L. T. N. S. 321. As to the provisions of a scheme of an institution for the reformation of vagrants, see *Re Bridewell Hospital*, 6 Jur. N. S. 1134. And as to a scheme for the application of a fund left for loans to young freemen of a company, see *Att.-Gen. v. Ironmongers' Co.*, C. P. Coop. 283.

(*t*) *Att.-Gen. v. Buller*, Jac. 407.

(*u*) *Att.-Gen. v. Mayor of London*, 3 Bro. C. C. 171; *Att.-Gen. v. Bishop of Worcester*, 9 Hare, at p. 356; *Att.-Gen. v. Bovill*, 1 Ph. 762; *Att.-Gen. v. St. John's Hospital, Bath*, L. R. 1 Ch. 92; *Manchester School Case*, L. R. 2 Ch. 497. As to the alteration of a scheme in the case of a foreign charity, see *Mayor of Lyons v. Adv.-Gen. of Bengal*, 1 App. Cas. 91, 110.

(*x*) *Att.-Gen. v. Bishop of Worcester*, 9 Hare, at p. 356.

(*y*) *Att.-Gen. v. Dedham School*, 23 Beav. 350; *Att.-Gen. v. Wyggeston's Hospital*, 12 Beav. 113. See ante, p. 92.

operate beneficially for the charity, it is his duty to apply for an alteration of it (a).

A scheme was amended, on the application of the Attorney-General, by striking out a provision relating to the granting of building leases; the granting of leases being left to be governed by sect. 21 of the Charitable Trusts Act, 1853 (b). Provision as to building leases struck out.

In one case a scheme for the regulation of an eleemosynary charity was altered by striking out a provision as to religious instruction (c); and in another for the purpose of augmenting the number of governors (d). Religious instruction. Number of governors.

The Court, however, proceeds with the utmost caution in directing the alteration of a scheme; and it will not do so at all except upon the most substantial grounds and upon the clearest evidence, not only that the scheme does not operate beneficially, but that it can by alteration be made to do so consistently with the object of the foundation. "Incalculable mischief will ensue to all the charities in the kingdom if this rule be not strictly observed, and if the Court ventures in such cases to interfere, upon speculative views as to the result of alterations, or in matters of discretion or regulation—matters on which the opinion of each succeeding Attorney-General and of each succeeding judge may well be permitted to differ" (e). Caution in altering schemes.

A scheme will not be altered, even for the purpose of restoring the fund to its original object, unless it is clear that the proposed application will be as beneficial as the existing one (f). Not unless for benefit of charity.

And it seems that in no case will a scheme be altered, except upon the application or with the consent of the Attorney-General (g). Nor except with consent of Att.-Gen.

An application by the existing trustees of an old charity for a supplemental order, authorising them to propose a new scheme, the existing scheme giving them no liberty to apply to the Court, was, the Attorney-General having intimated his intention to file an information, refused (h). Application by charity trustees for new scheme refused.

(a) *Att.-Gen. v. Bishop of Worcester*, 9 Hare, at p. 360.

(b) *Re Henry Smith's Charity*, 20 Ch. D. 516.

(c) *Att.-Gen. v. St. John's Hospital, Bath*, 2 Ch. D. 554.

(d) *Re Browne's Hospital, Stamford*, 60 L. T. N. S. 288.

(e) *Per Turner, V.-C.*, in *Att.-Gen. v. Bishop of Worcester*, 9 Hare, at p. 361;

and see *Glasgow College v. Att.-Gen.*, 1 H. L. C. 800; *Att.-Gen. v. St. John's Hospital, Bath*, L. R. 1 Ch. 92; *Re Browne's Hospital, Stamford*, *supra*.

(f) *Att.-Gen. v. Stewart*, L. R. 14 Eq. 17; and see *Glasgow Coll. v. Att.-Gen.*, *supra*.

(g) *Att.-Gen. v. Stewart*, *supra*.

(h) *Att.-Gen. v. Hall*, Set., 4th ed., p. 561.

Jurisdiction at Chambers.

Schemes may
be directed at
chambers.

Under sect. 28 (i) of the Charitable Trusts Act, 1853, the jurisdiction to establish and alter schemes for the regulation and management of charities, of which the gross annual income exceeds £30, may be exercised at chambers (k).

County Courts.

County
Courts.

Where the gross annual income of the charity does not exceed £50, jurisdiction with regard to schemes is possessed by the County Courts (l). But no order for the approval of a scheme is valid until confirmed by the Charity Commissioners (m). And the Charity Commissioners may direct cases within the jurisdiction of a County Court to be taken before the Chancery Division in the first instance (n); or, if dissatisfied with the order of the County Court, they may remit the case for re-consideration, or transfer the matter to the Chancery Division (o). And provision is made for the publication of notices of application for schemes (p).

Establishment of Schemes by Charity Commissioners.

Schemes by
Charity Com-
missioners.

By sect. 2 of the Charitable Trusts Act, 1860 (q), the Board of Charity Commissioners are empowered, upon the application of any person or persons who, under sect. 43 (r) of the Charitable Trusts Act, 1853, might apply to any judge or Court for the like purposes, to make such effectual orders as might be made by a judge at chambers or a County Court, for the establishment of a scheme for the administration of the charity. The Board must, however, before making an order, notify to the trustees of the charity their intention of exercising their jurisdiction (s); and where the gross income of the charity exceeds £50 the order cannot be made except upon the application of the trustees (t); and the Board are not bound to exercise jurisdiction over contentious cases (u). Provision is made for public notice to be given of a proposed order, and for the receipt of objections or suggestions (x), and for the publication of

(i) *Post.*

(k) For forms of orders, see Set., 4th ed., pp. 568 *et seq.*

(l) Charit. Trusts Act, 1853, s. 32, *post.*; and see note thereto; Charit. Trusts Act, 1860, s. 11, *post.*

(m) Charit. Trusts Act, 1853, s. 36, *post.*

(n) *Ibid.* s. 35.

(o) *Ibid.* s. 37.

(p) *Ibid.* s. 42.

(q) *Post.* With regard to the making of schemes by the Board, see n. (l) to the same section.

(r) *Post.*

(s) Charit. Trusts Act, 1860, s. 3, *post.*

(t) *Ibid.* s. 4.

(u) *Ibid.* s. 5, and note thereto; *Re Burnham National Schools*, L. R. 17 Eq. 241.

(x) *Ibid.* s. 6.

definitive orders (*y*). And the Attorney-General, or any person authorised by him, or by the Board, may, within three months after the publication of the definitive order, appeal by petition to the Chancery Division (*z*); and the Attorney-General, or any person authorised by him, or by the Board, may appear as respondent to the petition (*a*).

The jurisdiction of the Board is exercisable with reference to corporations who, either solely or jointly with other persons, are the recipients of the benefits of a charity (*b*).

By the Charitable Trusts Act, 1853 (*c*), powers are also given to the Charity Commissioners to frame provisional schemes for the appropriation of charitable property to varied trusts, when the authority of Parliament is required to carry them into effect.

Schemes
requiring
authority of
Parliament.

The mode of procedure for framing such schemes is provided by sects. 55 to 60 of the Act (*d*).

The powers conferred by these sections have fallen into disuse, owing to the difficulty which was experienced in obtaining the approval of Parliament to a scheme (*e*).

Having regard to the large powers of application *cy-près* now possessed by the Court and the Board, the necessity for Parliamentary authority seldom arises (*f*).

The Board are also empowered to establish schemes for letting charity property (*g*).

Schemes for
letting.

Long unauthorised *cy-près* application is no objection to a scheme of the Charity Commissioners authorising a different application (*h*).

Long unauthorised
cy-près appli-
cation.

The authority of the Charity Commissioners extends to charities founded and endowed in England and Wales, although the revenues are applied abroad (*i*). And it seems that their authority also extends to charities which are founded and endowed abroad, if their revenues are applied in England or Wales (*j*).

Extent of
jurisdiction.

The jurisdiction of the Charity Commissioners extends (*k*) to all

(*y*) Charit. Trusts Act, 1860, s. 7. See *Re Hackney Charities*, 34 L. J. Ch. 169.

(*z*) *Ibid.* s. 8, and Charit. Trusts Act, 1869, s. 10, *post*. But a scheme settled by the Charity Commissioners will not be interfered with on appeal unless they have exceeded their powers: *Re Campden Charities*, 18 Ch. D. 310; and see *Re Sekeford's Charity*, 5 L. T. N. S. 488; and *ante*, p. 101.

(*a*) Charit. Trusts Act, 1860, s. 9, *post*.

(*b*) *Ibid.* s. 10.

(*c*) Sect. 54, and note thereto, *post*.

(*d*) *Post*.

(*e*) See Introduction to Part III. of this Book, *post*.

(*f*) The only case in which it would be likely to arise would be when the proposed scheme would contravene some existing statute.

(*g*) Charit. Trusts Amend. Act, 1855, s. 39, *post*.

(*h*) *Re Campden Charities*, 18 Ch. D. 310.

(*i*) *Re Duncan*, L. R. 2 Ch. 366.

(*j*) *Ibid.*

(*k*) Charit. Trusts Act, 1853, s. 66; and Charit. Trusts Amend. Act, 1855, s. 48, *post*.

endowed institutions within the interpretation of the Statute of Elizabeth (*l*), with some important exceptions (*m*).

Alteration of
scheme.

The Charity Commissioners have the same power as a judge at chambers (*n*) to alter a scheme, whether made by themselves or by the Court, and to substitute a new scheme therefor (*o*).

Endowed
Schools Acts.

Under the Endowed Schools Acts, 1869, 1873, and 1874 (*p*), the Charity Commissioners (*q*) have temporary powers to make schemes for educational endowments (*r*), with certain exceptions, in such a way as to make them as conducive as possible to the advancement of the education of boys and girls (*s*). They have also powers of apportionment in cases where part of the endowment is an educational endowment within the meaning of the Act, and part is applicable to other charitable uses (*t*). And provision may be made for the alteration of schemes so settled (*u*).

They have also under these Acts, extensive powers of applying certain non-educational charities to educational purposes (*x*).

The procedure provided for making schemes is contained in sects. 31 to 51 of the Endowed Schools Act, 1869, and a power of appeal to the Queen in Council with regard to a proposed scheme is given in certain cases (*y*).

The powers conferred by the Endowed Schools Acts are now being annually continued by the Expiring Laws Continuance Acts (*z*).

Restriction
of powers of
Court.

During the continuance of these powers the Court cannot make a scheme with regard to an endowed school or educational endowment without the consent of the Committee of Council on Education (*a*).

Exhibitions
at university
restricted to
particular
school.

Under these Acts the Charity Commissioners have power to inquire into the endowment of exhibitions at a college of a university whenever they are restricted to a particular school or a particular district (*b*).

(*l*) See now sect. 13, sub-s. (2) of the Mortmain and Charit. Uses Act, 1888, *post*.

(*m*) See sect. 62 of the Charit. Trusts Act, 1853, and notes thereto; sect. 49 of the Charit. Trusts Amend. Act, 1855; and sect. 15 of the Charit. Trusts Act, 1869, *post*.

(*n*) *Ante*, p. 132.

(*o*) See Charit. Trusts Act, 1860, s. 2, *post*.

(*p*) *Post*.

(*q*) End. Schools Act, 1874, s. 1, *post*.

(*r*) See End. Schools Act, 1869, s. 5, and notes thereto, *post*.

(*s*) End. Schools Act, 1869, s. 9, *post*. An outline of the provisions with regard to such schemes will be found *post*, pp. 170, 171.

(*t*) *Ibid.* s. 24.

(*u*) *Ibid.* s. 28; and End. Schools Act, 1873, s. 10, *post*.

(*x*) End. Schools Act, 1869, s. 30, *post*.

(*y*) *Ibid.* s. 39; End. Schools Act, 1873, s. 14, *post*.

(*z*) See note (*c*) to sect. 6 of the End. Schools Act, 1874, *post*.

(*a*) End. Schools Act, 1874, s. 6, *post*.

(*b*) *Re Meyrick's Fund*, L. R. 7 Ch.

A scheme under the Endowed Schools Acts usually provides that any alteration in it may be made by the Charity Commissioners under their ordinary jurisdiction. Alterations in such schemes are consequently generally made under the powers of the Charitable Trusts Acts (*d*). Alteration.

The Charity Commissioners have also received extensive powers for a limited period to enable them to deal with and make schemes for the application and management of the property of the parochial charities of the City of London (*e*). City of London parochial charities.

They are also empowered in certain cases to make schemes with regard to the application of the property of municipal corporations dissolved under the Municipal Corporations Act, 1883 (*f*). Dissolved municipal corporations.

By the Allotments Extension Act, 1882 (*g*), it is provided that in a scheme relating to any charity, part of the endowment of which consists of land other than buildings, a provision must be inserted authorising the trustees to set aside portions of the land for allotments. Allotments.

Under the Commons Act, 1876 (*h*), the Charity Commissioners have power, upon the application of the trustees of a fuel allotment, to authorise the use of such allotment as a recreation ground and field garden, or for either of such purposes, and to establish a scheme for its administration accordingly. Fuel allotment.

They have also power to make schemes with regard to prison charities (*i*). Prison charities.

500; and see End. Schools Act, 1869, ss. 4, 5, as amended by End. Schools Act, 1874, s. 1.

(*d*) See sect. 23 of the End. Schools Act, 1869, *post*.

(*e*) City of London Parochial Charities Act, 1883, *post*. With regard to the duration of these powers, see sect. 4 of

that Act, *post*.

(*f*) Municipal Corporations Act, 1883, *post*.

(*g*) Sect. 14, *post*.

(*h*) Sect. 19, *post*.

(*i*) Prison Charities Act, 1882, *post*, and see n. (*a*) to sect. 2.



SECTION II.

DOCTRINE OF CY-PRÈS.

When not applicable.

Intention of founder observed.

By whatever authority a charitable trust is carried into execution, whether by the Crown, the Court, or the Charity Commissioners, the primary rule is that the intention of the donor must be observed.

Where clearly expressed cannot be departed from.

Where the object of the testator's bounty is clearly defined and his charitable purpose is capable of being carried into effect, and is not contrary to law, his directions must be strictly followed. In such a case there is no power to apply the gift to any other purpose than that which he has marked out. The mere fact that the gift might be more usefully applied in some other way is no ground for departing from the intention of the donor (*j*).

Accordingly, where the trust was to erect and endow almshouses the Court refused to sanction the building of a hospital (*k*).

"It is not its (the Court's) duty to direct charity property to be employed in such manner as it thinks will be the most beneficial for public purposes, but to carry into effect the intentions expressed by the founders, so far as those intentions are not inconsistent with any existing law. The authorities show this very distinctly—that the Court cannot vary and modify existing charity trusts so as to meet its own views with regard to what it may think most beneficial and for the general advantage of the public . . . but this Court will see that the trusts are properly administered, and that the directions and intentions of the founder are duly carried into effect" (*l*).

Disused burial grounds.

In *Re St. Pancras Burial Ground* (*m*), a piece of land was vested in the vicar and churchwardens and their successors as trustees for the purpose of a burial ground for the use of the parish; the burial fees were to be fixed by the church trustees and paid to the churchwardens, and when they amounted to a certain sum were to be paid to the church trustees. The burial ground having been closed under an Order in Council, made in pursuance of 15 & 16 Vict. c. 85, s. 2, under which power is given to direct that burials "shall be discontinued wholly or subject to any exceptions or qualifications mentioned in such Order, and so from time to time

(*j*) *Att.-Gen. v. Boulton*, 2 Ves. Jun. at p. 388; *Att.-Gen. v. Whiteley*, 11 Ves. 241; *Philpott v. St. George's Hospital*, 27 Beav. 107, 111, 112; *Att.-Gen. v. Sherborne Grammar School*, 18 Beav. 256, 280.

(*k*) *Philpott v. St. George's Hospital*, *supra*. See also *Clephane v. Lord Provost of Edinburgh*, L. R. 1 H. L. Sc. at p. 421.

(*l*) *Att.-Gen. v. Boucherett*, 25 Beav. at pp. 118, 119.

(*m*) L. R. 3 Eq. 173.

as circumstances may require," it was held that the trusts had not necessarily come to an end, and a scheme was refused.

The same principle applies where there has been an increase in the revenues of the charity. In this case, also, so long as the objects of the original trust can properly be carried into effect, and the increased income is required by them, it cannot be applied for any other purpose. There can be no *cy-pres* application until the objects of the original trust are exhausted (n).

Increase of revenue.

Primâ facie surplus income arising by reason of an increase in the value of the charity property is apportioned *pro ratâ* among the objects of the donor's bounty (o).

Primâ facie divisible among existing objects.

In one case a testator directed the income of certain property to be applied in apprenticing poor children of certain places, not more than £10 to be allowed for each child. There not being a sufficient number of objects to exhaust the income if the apprentice fees were not to exceed £10 each, and it being moreover impossible to procure proper situations at so low a rate, the Court increased the allowance for the apprentice fees, on the ground that the testator had intended the whole of the provision for the charities he had pointed out, and imagined that there would be objects enough to exhaust it at the rate of £10 for each apprentice fee (p).

Apprenticeship fees increased.

Where the donees in trust are themselves among the objects intended to be benefited, as being entitled, not to enjoy the whole surplus beneficially, but to receive a specified sum out of the charity revenue, they will, of course, themselves partake in any *pro ratâ* division of surplus income (q).

Donees in trust objects of charity.

Where a specific part of the income is given to one charity and the balance to another, *primâ facie* any increase belongs to the latter (r).

Specified sum to one object and balance to another.

It is a question of construction upon which of these two principles surplus income is to be applied (s).

Question of construction.

(n) *Att.-Gen. v. Coopers' Co.*, 19 Ves. at pp. 189, 190; *Att.-Gen. v. Love*, 23 Beav. at p. 506; *Re Palatine Estate Charity*, 39 Ch. D. 64.

(o) *Thetford School Case*, 8 Co. Rep. 130; *Att.-Gen. v. Townsend*, Duke, 34; *Att.-Gen. v. Johnson*, Amb. 190; *Att.-Gen. v. Sparks*, *ibid.* 201; *Ex parte Jortin*, 7 Ves. 340; *Att.-Gen. v. Barham*, 4 L. J. Ch. 128; *Att.-Gen. v. Caius Coll.*, 2 Keen, 150; *Att.-Gen. v. Skinners' Co.*, 2 Russ. 407; *Att.-Gen. v. Dean and Canons of Windsor*, 8 H. L. C. at p. 452; *Att.-Gen. v. Jesus Coll., Oxford*, 29 Beav. 163; *Att.-Gen. v. Marchant*, L. R. 3 Eq. 424. As to the disposal of surplus income when it does not go to charity, see *ante*, pp. 46 *et seq.*

(p) *Att.-Gen. v. Minshull*, 4 Ves. 11. See also *Att.-Gen. v. Bishop of Llandaff*, 10 L. J. Ch. 361, where the Craven scholarships were increased; *Att.-Gen. v. Earl of Devon*, 15 Sim. 193; and *Ex parte Jortin*, 7 Ves. 340, where the salaries of schoolmasters were increased.

(q) *Att.-Gen. v. Skinners' Co.*, 2 Russ. 407; *Att.-Gen. v. Drapers' Co.*, 4 Beav. 67; *Att.-Gen. v. Caius Coll.*, 2 Keen, 150; and see *Att.-Gen. v. Dean and Canons of Windsor*, 8 H. L. C. at p. 406.

(r) *Att.-Gen. v. Solly*, 5 L. J. Ch. 5. Cf. *Att.-Gen. v. Smythies*, 2 R. & M. 717; and other cases cited *ante*, pp. 50, 51.

(s) *Mayor, &c. of Southmolton v. Att.-Gen.*, 5 H. L. C. 1.

In *Att.-Gen. v. Mayor of Bristol* (t), a corporation covenanted to pay annual sums, out of property vested in it for certain charitable purposes, to certain charities in rotation. There was no express gift of the surplus, but the corporation was itself one of the charities. It was held that the other charities were not entitled to call for a distribution of the increased rents.

Master entitled to whole surplus.

On the same principle, it has been held, in a case where a charitable corporation consisted of the master and poor, and certain specified payments were directed to be made to the poor, that the master was entitled to the whole surplus beneficially (u).

Usually only to fair remuneration.

As a rule, however, a master or other officer of a charity is not allowed to receive more of the revenues than is a proper remuneration for his services.

In *Att.-Gen. v. Master of Brentwood School* (x), where the endowment of a grammar school was vested in the master and wardens as a corporation, it was held that the master was not entitled to the surplus income. "It is," said Leach, M. R. (y), "the settled principle of this Court in the administration of charity property, given not for purposes of individual benefit but for the performance of duties, that, if the revenues happen to increase so as to exceed a reasonable compensation for the duties, the surplus must be applied to other charitable purposes."

Express direction that surplus income shall not go to specified objects.

One object cannot receive benefit of increase to exclusion of others.

The rule with regard to division of surplus income among the objects of the charity is, of course, not followed where there is an express provision that surplus income shall not go to the specified objects (z).

One object of the testator's bounty should not *prima facie* be selected to receive the increased benefit to the exclusion of the other objects.

Where the charity consisted of a school and almshouse, and the income had increased, Lord Eldon said, "It is impossible not to admit that some increase of salary is necessary now beyond the sum of 40%, which was considered necessary in 1708; but, having due regard to that, the Court and the trustees must recollect that they have not the power to augment the benefits of one part of the institution without similar attention to the other objects. The consequence is, that if there is to be an increase for the one, there must be a contemporaneous increase for the other" (a).

(t) 2 J. & W. 294.

(u) *Att.-Gen. v. Smythies*, 2 R. & M. 717. See also *ante*, p. 51.

(x) 1 My. & K. 376; *S. C. nom. Att.-Gen. v. Tufnell*, 12 Beav. 35. See also *Ex parte Berkhamstead Free School*, 2 V. & B. 134, 144; *Att.-Gen. v. Gove-*

nors of Atherstone School, 3 My. & K. at p. 555.

(y) At p. 394.

(z) *Att.-Gen. v. Liddell*, 19 W. R. 297.

(a) *Att.-Gen. v. Coopers' Co.*, 19 Ves. at p. 189. This, however, only applies

The doctrine of *cy-près* is not applicable in cases where there is a temporary surplus revenue, as where the expenditure is of a fluctuating character and the surplus of one year may consequently be required to meet the expenses of another. Temporary surplus.

Thus with regard to cases where the charity income is applicable to repairs, Romilly, M. R., said (*b*), "It is to be observed that they (repairs) are of a very uncertain character; one year they may be very large and another very small, and I should not consider the doctrine of *cy-près* applicable in every case of a surplus."

Gifts for purposes not charitable within the meaning of the statute of Elizabeth (*c*), which fail, whether by reason of their being given upon trusts which infringe the rule against perpetuities, or because they are too indefinite to be carried into effect, or for any other reason, cannot be applied *cy-près* (*d*). Purposes not charitable.

Cy-près Doctrine, when applicable.

We have seen that there is a general rule that whenever a testator manifests a general intention to devote a fund to charity, that intention is carried into effect, although no definite purposes are named, or although the objects which are named are incapable of being effected (*e*). General charitable intention but particular purposes not specified.

In these cases the general intention of the donor to devote to charity is carried into effect, but the particular mode of application is supplied for him. The principle upon which this is done is the doctrine of *cy-près*. The term is not, perhaps, quite applicable to cases where no particular objects are named by the donor, but it is commonly extended to include them (*f*), and that extension is convenient. General intention effected *cy-près*.

But there is jurisdiction, not only to settle initially the objects to which a charitable gift is to be applied, but also from time to time to vary and re-model the application of the funds of a charity as circumstances require. To these cases, also, the doctrine of *cy-près* is applied. Re-modelling existing charity.

The cases in which, where a charity is being established for the first time, the Court is called upon to supply the particular objects Initial establishment of charity.

where the original objects are proper to be benefited. Where this is not so, the proportions may be varied, or the whole or any part applied *cy-près*, see *Att.-Gen. v. Marchant*, L. R. 3 Eq. 424; *post*, p. 142.

(*b*) *Att.-Gen. v. Love*, 23 Beav. at p. 507.

(*c*) See *ante*, pp. 17, 36; and see Mortm. and Charit. Uses Act, 1888, s. 13, sub-a. (2), *post*.

(*d*) *Re Clark's Trusts*, 1 Ch. D. 497; *Carns v. Long*, 2 De G. F. & J. 75; *Thomson v. Shakespear*, 1 De G. F. & J. 399; *Att.-Gen. v. Haberdashers' Co.*, 1 My. & K. 420.

(*e*) *Ante*, pp. 29 *et seq.*

(*f*) See per Lord Eldon, in *Moggridge v. Thackwell*, 7 Ves. at p. 69; *Cary v. Abbot*, 7 Ves. 490. See also the observations of Lord Eldon in *Mills v. Farmer*, stated *ante*, p. 30.

of the testator's bounty, are the cases already referred to, in which, a general charitable intention being shown, a gift to charity is supported, where, if it were not charitable, it would fail.

Enumeration.

It is convenient, however, to enumerate them here.

Indefinite gifts.

It is by means of the *cy-près* principle that charitable gifts expressed in general and indefinite terms are applied to particular objects (*h*). So also, where, although a general charitable intention is shown, the mode by which the objects were intended to be ascertained fails. This case arises where the specific charitable purposes are left to be afterwards named, either by the donor himself (*i*), or by some other person (*k*), and they are not named; or where the gift is to charitable and non-charitable objects, in proportions to be named by other persons, and no apportionment is made (*l*).

Object impossible.

The application of the principle is also required where the particular object named cannot be carried out (*m*), or where the institution to which a bequest is given has ceased to exist (*n*), or never existed, or cannot be found (*o*), or where there are several institutions answering the description given by the testator (*p*), or where the names of the charities to be benefited are left blank (*q*).

Postponed application.

Similarly, where there is an immediate charitable gift, but the application is postponed, and the purpose named never arises, or when it does, the fund is larger than is required to satisfy it.

"If the fund should, either originally, or in process of time, be or become greater in amount than is necessary for [the purpose named], or if strict compliance with the wishes and directions of the author of the trust should turn out to be impracticable, this Court has power to apply the surplus or the whole (as the case may be) to such other purposes as it may deem proper, upon what is called the *cy-près* principle" (*r*).

(*h*) *Att.-Gen. v. Clarke*, Amb. 422; *Att.-Gen. v. Syderfin*, 7 Ves. 43, n.; and see *ante*, pp. 29, 30 *seq.*

(*i*) *Mills v. Farmer*, 1 Mer. 55; and cases cited *ante*, p. 30, n. (*f*).

(*k*) See cases cited *ante*, p. 31 notes (*j*), (*k*), (*l*), (*m*), and (*n*).

(*l*) See cases cited *ante*, p. 32, n. (*q*).

(*m*) *Att.-Gen. v. Oglander*, 3 Bro. C. C. 166; *Incorporated Society v. Price*, 1 J. & Lat. 498; *Att.-Gen. v. Hicks*, Highm. Mortm. p. 336; *Att.-Gen. v. Glyn*, 12 Sim. 84; *Att.-Gen. v. Ironmongers' Co.*, 2 My. & K. 576; *Att.-Gen. v. Daugars*, 12 W. R. 363; *S. C.*, 33 Beav. 621; *Bunting v. Marriott*, 19 Beav. 163; *Att.-Gen. v. Bunce*, L. R. 6 Eq. 563; *Att.-Gen. v. Stewart*, L. R. 14 Eq. 17; *Att.-Gen. v. Hankey*, L. R. 16 Eq. 140, n.; *Re Prison Charities*, *ibid.*

129; *Biscoe v. Jackson*, 35 Ch. D. 460; and see *ante*, pp. 32 *seq.*

(*n*) *Hayter v. Trego*, 5 Russ. 113; *Coldwell v. Holme*, 2 Sm. & G. 31; *Simon v. Barber*, 5 Russ. 112; *Loscombe v. Wintringham*, 13 Beav. 87; *Marsh v. Att.-Gen.*, 2 J. & H. 61. But not where there is merely an intention to benefit a particular institution, see *ante*, pp. 40, 41.

(*o*) *Re Clergy Society*, 2 K. & J. 615; *Thorley v. Byrne*, 3 Hare, 195, n.; *Re Maguire*, L. R. 9 Eq. 632; *Daly v. Att.-Gen.*, 11 Ir. Ch. R. 41.

(*p*) *Bennett v. Hayter*, 2 Beav. 81; *Simon v. Barber*, 5 Russ. 112; *Re Alechin's Trusts*, L. R. 14 Eq. 230.

(*q*) *Pieschel v. Paris*, 2 S. & S. 384.

(*r*) Per Lord Selborne in *Chamberlayne v. Brockett*, L. R. 8 Ch. at p. 211.

There can be no *cy-près* application where the gift to charity is conditional, and the condition is not satisfied; for unless the condition is fulfilled, the gift cannot take effect (s).

Conditional gift.

The principle is similarly employed where there is a general charitable intention, and the fund is larger than is required for the objects named, or the whole income is not disposed of (t).

Surplus income.

Under the same head fall also cases where application *cy-près* is rendered necessary by reason of the trustees named declining to accept the trusts, as where property is given to a college of a university for purposes connected with the college, and the college refuses to accept it (u).

Trustees disclaiming.

So, also, where the testator appointed as trustee the holder of an office which was abolished before his death (x).

In *Att.-Gen. v. Mayor of London* (y), a new application of the charity was rendered necessary, by reason of the country in which the charity had previously been administered having become an independent state.

Country in which charity administered becoming independent.

Where the legacy is for a charitable object in a foreign country, which fails, it does not appear that it will be applied *cy-près* in this country (z).

Foreign charity not applied *cy-près* in England.
Illegal gift.

A charitable bequest which is void, because contrary to the law, will in many cases be applied *cy-près* (a). This was formerly the case with a gift for superstitious uses (b). Another instance is where accumulation is directed beyond the period allowed by law (c). So, also, where there was a bequest to supply the inmates of a workhouse with porter (d).

In the case of Roman Catholic charities, provision is, by the

Roman Catholic Charities Act.

(s) *Ibid.*; and cf. *New v. Bonaker*, L. R. 4 Eq. 655; and see *ante*, p. 54.

(t) *Anon.*, cited 2 J. & W. at p. 320; and see *Thetford School Case*, 8 Co. 130; *Att.-Gen. v. Minshull*, 4 Ves. 11; *Att.-Gen. v. Wansay*, 15 Ves. 231; *Att.-Gen. v. Earl of Winchelsea*, 3 Bro. C. C. 374; *Att.-Gen. v. Holland*, 2 Y. & C. Ex. 683; *Att.-Gen. v. Bovill*, 1 Ph. at p. 768; *Re Ashton's Charity*, 27 Beav. 115.

(u) *Att.-Gen. v. Andrew*, 3 Ves. Jun. 633; *Reeve v. Att.-Gen.*, 3 Hare, 191; *Denyer v. Druce*, Tambl. 32. Where the objects named are still capable of being carried out, although the trusts are disclaimed, the execution by the Court does not, of course, involve an application of the *cy-près* principle.

(x) *Att.-Gen. v. Stephens*, 3 My. & K. 347.

(y) 3 Bro. C. C. 170.

(z) *New v. Bonaker*, L. R. 4 Eq. 655.

(a) *Moggridge v. Thackwell*, 7 Ves. at p. 76; *Sims v. Quinlan*, 16 Ir. Ch. R. 191.

(b) *Da Costa v. De Pas*, Amb. 228; *Att.-Gen. v. Guise*, 2 Vern. 266; *De Garcin v. Lawson*, 4 Ves. 433, n.; *Cary v. Abbot*, 7 Ves. 490; *De Themmines v. De Bonneval*, 5 Russ. 288; *Att.-Gen. v. Todd*, 1 Keen, 803. Under the present law, where the purposes of a gift are charitable, it can never be void as superstitious, and therefore the necessity for such *cy-près* application can scarcely arise except under the Roman Catholic Charities Act, 1860, see *ante*, p. 24. As to bequests, which would now be held to be superstitious, not being charitable, see *West v. Shuttleworth*, 2 My. & K. 684; *Heath v. Chapman*, 2 Dr. 417; *Re Blundell's Trusts*, 30 Beav. 360.

(c) *Martin v. Margham*, 14 Sim. 280.

(d) *Att.-Gen. v. Vint*, 3 De G. & Sm. 704.

Roman Catholic Charities Act, 1860 (*e*), expressly made for the application *cy-près*, under certain circumstances, of gifts to superstitious uses.

Gift contrary to express enactment.

But a gift which is rendered void by the Mortmain and Charitable Uses Act, 1888 (*f*), cannot be applied *cy-près* (*g*).

Cy-près doctrine applied in re-modelling existing charity.

The doctrine of *cy-près* is required to be applied in the case of an existing charity, where the objects for which the charity was established have ceased to exist, or have become impossible to be carried out (*h*); or where lapse of time and change of circumstances have rendered a strict adherence to the original objects undesirable, or where the revenues of the charity have increased beyond their requirements (*i*).

Increased revenue.

Although, as we have seen (*k*), increased income is *prima facie* divided among the original objects of the charity, yet that is not necessarily so. Nor, similarly, is there any absolute rule that one or more of a number of specified objects may not receive an increased benefit to the exclusion of the others or other of them (*l*).

Original objects impracticable or satisfied.

If the increased revenue of the charity cannot, or cannot advantageously, be applied to the original objects, they being already sufficiently provided for, the doctrine of *cy-près* is let in.

Discretion as to division.

The rule, therefore, that surplus income is divided among the specified charitable objects, is a rule which is subject to the discretion of the Court, to be exercised in certain cases, and within certain limits (*m*).

"It is impossible to specify to what extent or under what circumstances the Court will exercise its discretion of varying the proportions. But suppose, for example, that one of the objects should have so far ceased as that there are few or no objects of that particular kind, and, therefore, should not require any increase: that, I think, would be a case for the exercise of the Court's discretion. So, I apprehend, if it should appear that the directions of the testator with respect to a particular object, if carried out in these days,

(*e*) 23 & 24 Vict. c. 134, s. 1; *post*, Part III. of this Book.

(*f*) Part II.; formerly 9 Geo. II. c. 36. See *post*, Part II. of this Book.

(*g*) *Sims v. Quinlan*, 16 Ir. Ch. R. 191; *Jarm. on Wills*, 4th ed. p. 250. Distinguish such cases as *Biscoe v. Jackson*, 35 Ch. D. 460.

(*h*) *Att.-Gen. v. Gibson*, 2 Beav. 317, n.; *Att.-Gen. v. Lawes*, 8 Hare, 32; *Att.-Gen. v. Ironmongers' Co.*, Cr. & Ph. 208; *Re Bridewell Hospital*, 8 W. R. 718; *Att.-Gen. v. Daugars*, 12 W. R. 363; *S. C.*, 33 Beav. 621; *Att.-Gen. v. Kell*, 2 Beav. 575; *Att.-Gen. v. Bunce*,

L. R. 6 Eq. 563; *Att.-Gen. v. Hankey*, L. R. 16 Eq. 140, n.; *Re Prison Charities*, *ibid.* 129; *Pease v. Pattinson*, 32 Ch. D. 154.

(*i*) *Att.-Gen. v. Wansay*, 15 Ves. 231; *Re Ashton's Charity*, 27 Beav. 115; *Re Latymer's Charity*, L. R. 7 Eq. 353; *Re Campden Charities*, 18 Ch. D. 310; and see *post*, pp. 154 *et seq.*

(*k*) *Ante*, p. 137.

(*l*) *Re Ashton's Charity*, *supra*.

(*m*) *Att.-Gen. v. Dean and Canons of Windsor*, 8 H. L. C. at p. 452; and see *Philpott v. St. George's Hospital*, 27 Beav. 107.

so far from being beneficial, would be detrimental to the objects he meant to benefit: in that case a good reason would exist for exercising the discretion" (n).

Thus, where rents were directed to be paid, as to 20% to the master of a certain school, as to 20% to Trinity College, Oxford, and as to 5% and 5% for the poor of two parishes, the Court directed an increase to be divided equally between the school and the college (o).

Where the charity was an endowed school, an inquiry was directed whether an application as to dealing with increased income should be made to the Committee of Council on Education, or to the Charity Commissioners or to Parliament (p).

Inquiry as to increased income.

The Court will not divide a surplus among the existing objects of the charity where the effect would be to make them cease to be objects of the kind intended to be benefited, as where a division of the surplus among almswomen would make them cease to be almswomen (q).

Not where division would make objects of charity cease to be so.

The doctrine of *cy-près*, in whatever case applied, is the same, and any variation in the mode and effect of its application must be ascribed to the difference in the circumstances under which it is brought into operation.

Doctrine of *cy-près* same in all cases.

Meaning of *Cy-près*.

The principle of *cy-près* is simply this, that where the charitable intention of the founder or founders cannot be literally carried out, it will be carried into effect as nearly as possible.

Meaning of *cy-près*.

If the mode becomes impossible the general object, if attainable and consistent with the rules of law and not contrary to 9 Geo. II. c. 36 (r), shall not be defeated (s); but the law, by the doctrine of *cy-près*, will substitute some other mode of devoting the property to charitable purposes (t).

The principle requires that the objects selected shall be in accordance, as nearly as possible, with those marked out by the founder, or in accordance, as nearly as possible, with the charitable intention which he has expressed (u). And the Court "is rather

Regard paid to founder's intention.

(n) Per Kindersley, V.-C., in *Att.-Gen. v. Marchant*, L. R. 3 Eq. at p. 430.

(o) *Att.-Gen. v. Marchant*, *supra*.

(p) *Att.-Gen. v. Mercers' Co.*, 18 W. R. 448.

(q) *Re Ashton's Charity*, 27 Beav. 115; see also *Att.-Gen. v. Smythies*, 2 R. & M. 717.

(r) Now Part II. of the Mortmain and Charit. Uses Act, 1888, *post*.

(s) *Att.-Gen. v. Whitchurch*, 3 Ves.

Jun. at p. 144; *Att.-Gen. v. Boulbee*, *ibid.* 220; *Att.-Gen. v. Stepney*, 10 Ves. 22.

(t) *Moggridge v. Thackwell*, 7 Ves. at p. 69; *Cary v. Abbot*, *ibid.* 490; *Mills v. Farmer*, 1 Mer. 55.

(u) *Mills v. Farmer*, *supra*; *Att.-Gen. v. Boulbee*, 2 Ves. Jun. at p. 387; *Att.-Gen. v. Painters' Co.*, 2 Cox, 51; *Cook v. Duckensfield*, 2 Atk. at p. 569; *Moggridge v. Thackwell*, 7 Ves. at p. 87;

astute in ascertaining some application in conformity more or less with the intention of the testator" (x).

"The true mode is to consider what he (the testator) did, and from what he did to collect what were his inclinations with regard to charity" (y).

One charity
not substi-
tuted for
another.

"You cannot substitute one charity for another. You may substitute for a particular charity which has been defined and which has failed, another charity *ejusdem generis*, or which approaches it in its nature and character; but you cannot take a charity which was intended for one purpose and apply it to a purpose altogether different" (z).

See Bischoff v. Jackson
35 L. D. 461-

Cy-près means
nearest to
that which
has failed.

Cy-près means the nearest to that which has failed, not the nearest to other charitable purposes which may have been provided for by the testator (a).

"The Court, when deciding whether the *cy-près* doctrine applies, looks only to the particular gift, and if it finds charity to be the legatee, sustains the legacy as such, without regarding at this stage of the inquiry (whatever may be proper when a scheme comes to be framed) the rest of the will" (b).

Residue given
to charity.

It follows that the power of the Court to apply *cy-près* a charitable legacy which has failed is not affected by the fact that the residue is given to charity (c), or that there is a limitation over in favour of another charity (d).

Contrary
intention.

The testator may, however, himself evince a contrary intention, as by inserting a direction, whether express or to be gathered from the language he has used, that the bequest if it fails shall fall into residue (e).

Object
selected need
not resemble
that named
by testator.

The charitable object for which a bequest is applied *cy-près* need not, however, bear any actual resemblance to the purpose named by the testator, so long as one bearing a close resemblance cannot be found (f).

Att.-Gen. v. City of London, 3 Bro. C. C. 171; *Att.-Gen. v. Dixie*, 2 My. & K. 342; *Glasgow v. Att.-Gen.*, 1 H. L. C. 800; *Att.-Gen. v. Hankey*, L. R. 16 Eq. 140, n.

(x) Per Lord Langdale in *Att.-Gen. v. Ironmongers' Co.*, 2 Beav. at p. 324.

(y) *Ibid.* 10 Cl. & F. at p. 924. See also *post*, p. 154.

(z) Per Lord Westbury in *Clephane v. Lord Provost of Edinburgh*, L. R. 1 H. L. So. at p. 421. See also per Lord Eldon in *Att.-Gen. v. Earl of Mansfield*, 2 Russ. 501; *Att.-Gen. v. Sherborne Grammar School*, 18 Beav. 256; *Philpott v. St. George's Hospital*, 27 Beav. at pp. 111, 112; *Re Prison Charities*, L.

R. 16 Eq. 129.

(a) *Att.-Gen. v. Ironmongers' Co.*, 10 Cl. & F. at p. 922.

(b) *Mayor of Lyons v. Adv.-Gen. of Bengal*, 1 App. Cas. at p. 114. See *Mills v. Farmer*, 19 Ves. 486.

(c) *Mayor of Lyons v. Adv.-Gen. of Bengal*, *supra*; *Ironmongers' Co. v. Att.-Gen.*, 10 Cl. & F. 908.

(d) *Re Parish of Upton Warren*, 1 My. & K. 410.

(e) *Mayor of Lyons v. Adv.-Gen. of Bengal*, *supra*, at p. 115. Cf. *Corbyn v. French*, 4 Ves. 431.

(f) See per Lord Cottenham in *Att.-Gen. v. Ironmongers' Co.*, Cr. & Ph. at p. 227.

Division among Charitable Objects.

In many cases the difficulty of application is solved by dividing the fund among the several objects. Where a fund is directed to be divided among specified charitable objects in unascertained proportions, as where the duty of apportioning is intrusted to trustees or others who fail to make an apportionment, the rule is to divide the fund among the different charitable objects equally (*g*).

Division
between
objects.

In *Att.-Gen. v. Buller* (*h*) a bequest was made for the relief of the poor in such parishes and in such manner as the trustees should think fit, but a particular parish was to be one of those benefited. A scheme devoting a small part of the income to the parish named, and the rest to a parish at a distance, was held not conformable to the will, and an equal division between the two parishes was ordered.

So, also, where the fund is directed to be divided between definite objects not charitable and charitable objects, in such proportions as trustees or other persons shall determine, and no apportionment is made.

Division
between
charitable
and non-
charitable
objects.

Thus, where the testator directed his trustees to apply a fund to such of his deserving relations as they thought fit, and also for charitable purposes (*i*).

So, also, where it cannot be ascertained which of several charitable institutions the testator intended to benefit (*j*), or where there are two or more objects to which the bequest is equally applicable (*k*), the fund may be divided between them, not necessarily in equal shares (*l*).

Uncertain
which institu-
tion intended.

But if there is no opposition on the part of one institution, the whole may be given to the other or others (*m*).

Again, where a fund is given partly for an illegal object and partly for a valid charitable purpose, and the amount which would be required for the illegal object cannot be ascertained, the fund will often be divided, the part attributable to the illegal object failing, and the part attributable to the valid purpose being upheld.

Illegal and
valid objects.

(*g*) *Re Hall's Charity*, 14 Beav. 115; *Hoare v. Osborne*, L. R. 1 Eq. at pp. 588, 589; *Att.-Gen. v. Marchant*, L. R. 3 Eq. 424; *Re Douglas, Obert v. Barrow*, 35 Ch. D. at p. 485.

(*h*) Jac. 407.

(*i*) *Doyley v. Att.-Gen.*, 4 Vin. Abr. 485, pl. 16; *Salisbury v. Denton*, 3 K. & J. 529. *Distinguish Down v. Worrall*, 1 My. & K. 561, ante, p. 39.

(*j*) *Bennett v. Hayter*, 2 Beav. 81;

Re Kilvert's Trusts, L. R. 7 Ch. 170; *Re Alchin's Trusts*, L. R. 14 Eq. 230. See also *Gibson v. Coleman*, 18 L. T. N. S. 236; *Simon v. Barber*, cited 3 Hare, 194, n., where the application was directed by the sign manual.

(*k*) *Waller v. Childs*, Amb. 524; *Re Hussey's Charities*, 7 Jur. N. S. 325.

(*l*) *Bennett v. Hayter*, supra.

(*m*) *Bunting v. Marriott*, 19 Beav. 163.

Thus, where a fund was given partly for educational purposes, and partly for the purchase of land to be let out to the poor, the second object being void under the Mortmain Statute (o), this method of division was adopted (p).

So also where the fund was given partly for the repair of a tomb, which was invalid, and partly for valid charitable purposes, it was divided equally (q).

Inquiry. An inquiry may also be directed as to the mode in which the funds should be apportioned (r).

Application of the Cy-près Doctrine.

Rules. Two rules may perhaps be laid down with regard to the manner in which the *cy-près* doctrine is applied.

Object selected must be nearest to that which has failed. The first has been already noticed (s). It is that the object or objects selected must be the nearest which can be found to that which has failed.

Benefits not extended beyond class intended by founder. The other is that the benefit of the charity must not be extended beyond the class of persons for whom the donor intended his bounty to be applied.

Ascertainment of class. What is the class of persons intended to be benefited is in every case a question of the founder's intention. In some cases that is not difficult to ascertain. Thus, the gift may be directed to be applied in a particular way for the benefit of persons answering a certain description. Here if the directions as to the particular mode of application are struck out, the class of persons whom it was intended to benefit remains. In other cases the question is one of greater complexity. Thus, the gift may be simply for the benefit of persons answering a particular description, and there may be no persons answering that description. In that case the class primarily intended must be discarded, and the question is which of several wider classes, each including the primary class, is the one to be selected. Again, the gift may be to a charitable institution, which never existed, or has ceased to exist. Here, if a general charitable intention is shown, the gift does not fail, and the class intended to be benefited consists of those persons for

(o) Formerly 9 Geo. 2, c. 36; now Part II. of the Mortm. & Charit. Uses Act, 1888.

(p) *Crafton v. Frith*, 4 De G. & Sm. 237.

(q) *Hoare v. Osborne*, L. R. 1 Eq. 585. See also *Adnam v. Cole*, 6 Beav. 353; *Re Rigley's Trusts*, 36 L. J. Ch. 147.

(r) *Adnam v. Cole*, *supra*; *Re Rigley's Trusts*, *supra*.

(s) *Ante*, pp. 143, 144.

whose benefit the general funds of the institution, if it had been in existence, would have been applied. In other cases, again, there is no guide except a general charitable intention, and the only description which the class of persons selected to receive the benefit must satisfy is that they are proper objects of charity.

Within the limits of these rules, the modes of application are as various as the character and objects of the charities to be dealt with. The decisions must therefore be examined.

Within these rules modes of application infinitely various.

In dealing with this subject it is convenient to reserve for separate consideration the important class of cases, in which change of circumstances and lapse of time, often combined with augmented revenues, render it necessary to re-model an existing charity.

Case of re-modelling ancient charity separately considered.

In many cases, where the doctrine is applied, the objects specified by the donor are capable of taking effect with a slight variation in the mode in which they are carried out.

Objects effected with slight variation.

Thus, where bequests have been given to a University, or college, or other institution for various purposes, and the donees have declined the trusts, the gifts have been directed to be applied to the purposes to which they would have been applied if the institutions named had accepted them (*t*).

Disclaimer of trusts.

Again, a condition attached by the testator to the enjoyment of the charity property may be removed.

Removal of condition.

In *Glasgow College v. Att.-Gen.* (*u*) a fund was given to maintain at Oxford scholars born and educated in Scotland, who should have spent a certain time as students at Glasgow College, each student executing a bond to take holy orders, and not to accept preferment in England or Wales. The charity was made the subject of a scheme, under which students were admitted to Baliol College from Glasgow College, without regard to their destination for holy orders or their return to Scotland.

On the same principle, where there was a bequest to the Royal National Lifeboat Institution, on condition that they should construct and keep up two tubular lifeboats at specified places, with a gift over if they should decline to do so, the Court, upon evidence that one of the places named was sufficiently provided for,

(*t*) *Dwyer v. Druce*, 3 Hare, 194, n. In this case the application was directed by the sign manual. See also cases cited *ante*, p. 32.

(*u*) 1 H. L. C. 800; *S. C.* nom. *Att.-Gen. v. Glasgow College*, 2 Coll. 665; this charity also came before the

Court in *Att.-Gen. v. Guise*, 2 Vern. 266, and *Att.-Gen. v. Baliol College*, 9 Mod. 407. See also *Andrew v. Merchant Taylors' Co.*, 7 Ves. 223, where a doubt was expressed whether an arrangement transferring funds from Cambridge to Oxford was an application *cy-près*.

substituted another station, and directed that the boat should be self-righting, and not tubular (*x*).

The Court, however, refused to alter the terms on which a lectureship in polemical divinity was founded (*y*).

Gift for
reduction of
debt.

In another case, (*z*) a gift to the trustees of a chapel "towards the reduction of the debt on that chapel," was paid to the trustees, though the debt in question had long been paid off.

Maintenance
of English
church in
Paris.

A fund which had been collected for the erection and maintenance of a church in Paris, in which the English service should be performed in French, was directed to be devoted by the Foreign Anglican Church and Educational Association to the erection of a permanent English church in Paris in the place of a certain temporary iron structure, the association undertaking for the performance of an English service once on each Sunday (*a*).

Neglect of
trustees.

In *Att.-Gen. v. Boulbee* (*b*) a trust was created for the benefit of the vicar of a certain parish for the time being, provided he should be presented at the recommendation of the trustees, and in no case without such recommendation. The trustees having neglected to recommend a person to the Chancellor, in whose gift the presentation was, a vicar was appointed without their recommendation. It was held, however, that he was entitled to the benefit of the trust. The testator, it was said, had two objects: first, a general charitable object, namely, a desire to provide a maintenance for the vicar; secondly, a desire to secure to his trustees the recommendation or approbation of the person nominated. Both these objects ought, if possible, to be effected; but, if the second failed, it would not be in accordance with the testator's intention to hold that the first failed also.

Increase in
recipients of
charity.

An increase will, in many cases, be made in the number of the recipients of a charity. Thus, where an almshouse was established for five poor men, the number of the almsmen was increased to ten (*c*).

In one case where property was devised in trust to apply the income for an almshouse, and to provide six beds for poor wayfarers not longer than one night, and to pay fourpence to each of them, and to provide flax for setting the poor to work, and the income of the charity had greatly increased, it was held that an admi-

(*x*) *Re Richardson's Will*, 58 L. T. N. S. 45.

(*y*) *Att.-Gen. v. Margaret and Regius Professors at Cambridge*, 1 Vern. 55.

(*z*) *Bunting v. Marriott*, 19 Beav. 163.

(*a*) *Rodwell v. Att.-Gen.*, 2 Times L. R. 712.

(*b*) 2 Ves. Jun. 380; 3 *ibid.* 220. See

also *Att.-Gen. v. Rigby*, 3 P. Wms. 145; *Att.-Gen. v. Leigh*, cited *ibid.* n.

(*c*) *Anon.*, cited 2 J. & W. at p. 320; *Thetford School Case*, 8 Co. 130, b.; *Att.-Gen. v. Minshull*, 4 Ves. 11; *Att.-Gen. v. Earl of Winchelsea*, 3 Bro. C. C. 374. See *Att.-Gen. v. Holland*, 2 Y. & C. Ex. 683.

nistration of the charity which made no increase in the number of wayfarers relieved was not a proper one, and that a scheme must be directed (d).

But no increase will be made in the objects of the charity until due care has been taken to provide for those already established (e).

No increase till original objects provided for.

An alteration may also be made in the kind of persons to take. Thus, a charity confined originally only to males may be extended to include females (f).

Extension to females.

Or the area from which the recipients of the benefits of a charity are directed to be taken may in a proper case be enlarged (g).

Area enlarged.

In *Att.-Gen. v. Wansay* (h) a bequest was made to the congregation of Presbyterians for placing out as apprentices two poor boys of members of the congregation living in a certain parish. The fund being considerably more than sufficient for that purpose, the surplus was applied *cy-près* to place out (1) sons of members of the congregation within the parish; (2) sons of members of the congregation in other parishes; (3) daughters of members of the congregation in the same manner; (4) sons of Presbyterians generally. And a proposal in favour of sons of persons within the parish of the established religion was rejected.

Att.-Gen. v. Wansay.

A charitable gift "for the benefit of the poorest of the testator's kindred, such as were sick, aged, and impotent persons," being construed as a gift for the benefit of persons necessitous and disabled, with a prior charge in favour of kinsmen, increased income was applied for sick, aged, or impotent poor (i).

Gift to poor kindred applied to poor persons not kinsmen.

A gift to an institution which does not exist will in some cases be applied *cy-près* to another institution having similar objects.

Gift to institution not existing.

Thus, a gift to the "Church Pastoral Aid Society" in Ireland, which had never existed, was directed to be paid to the Spiritual Aid Society for Ireland (j). A bequest to "The Benevolent Institution for the delivery of Poor Married Women at their own Habitations," which had ceased to exist, was given to "The Royal Maternity Society," having a similar object (k).

In one case, where the application was under the sign manual, a gift to a charity which did not exist was given to another institution benefited by the same will (l).

(d) *Att.-Gen. v. Corporation of Rochester*, 5 De G. M. & G. 797.

(e) *Att.-Gen. v. Coopers' Co.*, 19 Ves. at p. 190.

(f) *Anon.*, cited 2 J. & W. at p. 320; *Att.-Gen. v. Wansay*, 15 Ves. 231.

(g) *Att.-Gen. v. Wansay*, *supra*; *Re Sekford's Charity*, 4 L. T. N. S. 321; *Re Latymer's Charity*, L. R. 7 Eq. 353.

Cf. Re St. Leonard, Shoreditch, Parochial Schools, 10 App. Cas. 304.

(h) *Supra*.

(i) *Att.-Gen. v. Duke of Northumberland*, 7 Ch. D. 745.

(j) *Re Maguire*, L. R. 9 Eq. 632. See also *Bunting v. Marriott*, 19 Beav. 163.

(k) *Coldwell v. Holme*, 2 Sm. & G. 31.

(l) *Thorley v. Byrne*, 3 Hare, 195, n.

Or for class of persons intended to be benefited.

Or it may be applied under a scheme *cy-près* for the benefit of the class of persons apparently intended to be benefited.

Thus, a gift to the Clergy Society, which could not be found, was directed to be applied for distressed widows and children of clergymen (*m*).

A gift for a soup kitchen and hospital in a certain parish was in a recent case directed to be applied for the sick and poor of the parish (*n*).

In one case a gift to a lunatic asylum which did not exist was given to a poor relation of the testator (*o*).

Failure of object.

Where a fund was provided for a place of worship in London for Scotchmen who could only speak Gaelic, and the object failed because no minister could be found to officiate, it was applied *cy-près* for the benefit of the Caledonian Asylum (*p*).

School which had ceased to exist.

Similarly a gift to a society for the maintenance of a school which had ceased to exist was directed to be applied by them for the benefit of another school (*q*).

Reformation of vagrants by compulsory labour.

In another case a charity had been established for the reformation of vagrants by compulsory labour. The poor laws having rendered it impracticable to carry this purpose into effect as directed, the funds were ordered to be applied *cy-près* in providing two houses of occupation, one in London and the other in the country, for poor children who, if not admitted, would be under temptation to commit crime (*r*).

Relief of miners injured by colliery accident.

In a recent case (*s*) the surplus of a fund raised by contributions for relieving miners injured by a colliery accident was paid to a Miners' Relief Fund Friendly Society, which included among its members colliers as well as other miners, and the objects of which were to defray the funeral expenses of members, support their families, assist members disabled by accident, old age, or infirmity, and make certain payments upon death.

Superstitious object.

The case is similar where the charitable purpose named is illegal; as, for instance, because it contravenes the law against superstitious uses (*t*).

In *Da Costa v. De Pas* (*u*), a sum given for a Jewish synagogue was applied for a foundling hospital.

(*m*) *Re Clergy Society*, 2 K. & J. 615; and see *Daly v. Att.-Gen.*, 11 Ir. Ch. R. 41.

(*n*) *Biscoe v. Jackson*, 35 Ch. D. 460.

(*o*) *Sanford v. Gibbons*, cited 3 Hare, 195, n., a case of application by sign manual.

(*p*) *Att.-Gen. v. Stewart*, L. R. 14 Eq. 17.

(*q*) *Incorporated Society v. Price*, 1 J. & Lat. 498. See also *Daly v. Att.-Gen.*, *supra*.

(*r*) *Re Bridewell Hospital*, 8 W. R. 718.

(*s*) *Pease v. Pattinson*, 32 Ch. D. 154.

(*t*) *Da Costa v. De Pas*, Amb. 228. See also *ante*, p. 24.

(*u*) *Supra*; see *S. C.*, 2 Swanst. 487, n.

A gift for a charitable trust in favour of Roman Catholics is not invalidated by reason of the same being also subject to a superstitious trust. The Court, or the Charity Commissioners, may apportion the parts subject to the valid and illegal trusts respectively, and apply the part apportioned for the superstitious trust to lawful charitable purposes for the benefit of Roman Catholics (x).

So, also, where a legacy was given for providing the inmates of a workhouse with a pint of porter, which was illegal, it was directed to be applied in giving them tea, sugar, and the like (y). Illegal object.

A charitable trust for the benefit of a religious sect, which afterwards ceased to exist, was applied *cy-près* for the benefit of another sect, which had sprung from the original one (z). Class primarily to be benefited non-existent—religious sect.

Where the object of the charity was the benefit of French Protestant refugees in London, and there were none such, it was applied for the benefit of the French Protestant population in London (a). French Protestant refugees.

In *Att.-Gen. v. Hankey* (b), a fund for “procuring the discharge of prisoners from the Queen’s Bench and Marshalsea,” was directed to be applied for procuring the discharge of prisoners “from any gaol or house of correction in England or Wales, or in aiding their families, or in aiding prisoners discharged from any house of correction in England or Wales to get back to their families, or to procure work.” Prisoners for debt.

But in another case, where the trust was for poor prisoners, meaning poor prisoners for debt, and the object failed by reason of the abolition of imprisonment for debt, it was held that a proposed application of the fund for maintaining a school for the children of persons convicted of crime and undergoing sentence, was too remote from the intention of the donor (c). Purposes too remote.

In *Att.-Gen. v. Gibson* (d), a charitable trust for the redemption of poor slaves, was, by a scheme, directed to be applied to the education of apprentices in the British Colonies emancipated by the Act for the Abolition of Slavery, and for general educational purposes in such colonies. Redemption of slaves.

But it was considered that a gift for the redemption of British slaves in Turkey and Barbary, which failed, could not properly be applied for the benefit of pensioners in Greenwich Hospital, who

(x) Roman Catholic Charities Act, 1860, s. 1, *post*.

(y) *Att.-Gen. v. Vint*, 3 De G. & Sm. 704.

(z) *Att.-Gen. v. Bunce*, L. R. 6 Eq. 563; and see *Westwood v. McKie*, 21 L. T. N. S. 165.

(a) *Att.-Gen. v. Daugars*, 12 W. R. 363.

(b) L. R. 16 Eq. 140, n.

(c) *Re Prison Charities*, *ibid.* 129.

(d) 2 Beav. 317, n. See, however, *Att.-Gen. v. Ironmongers’ Co.*, 2 Beav. at pp. 325, 326; *S. C.*, nom. *Ironmongers’ Co. v. Att.-Gen.*, 10 Cl. & F. 908, where a similar application was refused; and *Att.-Gen. v. Bishop of Llandaff*, cited 2 My. & K. at p. 586.

were present at the battle of Algiers, or for the Seamen's Hospital Society, or the Royal Naval Benevolent Society, or the Royal Naval School, or the school attached to Greenwich Hospital (e).

Hospital for lepers.

Funds devoted to a hospital for lepers were applied to a county hospital (f).

Share of object which fails given to other objects named.

The share of a charitable object which has failed is sometimes applied to other charitable objects named by the donor.

In *Att.-Gen. v. Bishop of Llandaff* (g) property was given, as to part, to endow scholarships at the universities, and, as to the residue, to redeem British captives. There being no captives to redeem, a scheme was sanctioned for appropriating all the fund, except a moderate portion to be set apart in case captives should be made, in increasing the number and income of the scholars.

A similar case arose in *Att.-Gen. v. Ironmongers' Co.* (h). There a testator gave the residue of his estate to a corporation upon trust to apply one moiety of the revenue to the redemption of British slaves in Turkey or Barbary, and one-fourth to the support of charity schools in London where the education was according to the Church of England, not giving to any school more than 20% a year; and the rest was directed to be applied partly for providing a specified annual payment for a chaplain, and, subject thereto, for decayed freemen of the company. There being no British captives in Turkey or Barbary, it was declared that the moiety directed to be applied for that purpose and accumulations of income ought to be applied, after setting apart a certain sum for the redemption of possible captives, in supporting and assisting charity schools in England and Wales, where the education was according to the Church of England, but not to an amount of more than 20% per year to any one school; and there was a reference to approve and settle a scheme for that purpose. Lord Cottenham said (i): "I think the most reasonable course to be adopted is to look at the second gift, as indicative of the kind of charity preferred by the testator, but making it as general in its application as the first was intended to be, that is, open to all who might stand in need of its assistance; which leads to this conclusion, that it should be applied in support of charity schools, without any restriction as to place, where the education is according to the Church of England, but not to exceed 20% per year to any one."

(e) *Att.-Gen. v. Ironmongers' Co.*, Cr. & Ph. at p. 225.

(f) *Att.-Gen. v. Hicks*, Highm. Mortm. p. 336.

(g) Cited 2 My. & K. at p. 586; and see *Mills v. Farmer*, 19 Ves. 482.

(h) Cr. & Ph. 208. See *S. C.*, nom. *Ironmongers' Co. v. Att.-Gen.*, 10 Cl. & F. at p. 929; and *Att.-Gen. v. Gibson*, 2 Beav. 317, n.

(i) Cr. & Ph. at p. 225.

Where legacies were given to various charitable institutions, of which one failed, and the will contained a direction that if the specified purposes failed the legacies were to be applicable to the general purposes respectively, the failed legacy was held to be distributable *pro rata* among the other charitable purposes mentioned (*k*).

There is, however, no presumption that the testator would have chosen to appropriate the share of the object which has failed to increase the funds destined for the other objects of his bounty (*l*). The *cy-pres* to the one which has failed must be found without much regard to the others, if they are distinct (*m*).

Lord Cottenham states the law thus (*n*): "If several charities be named in a will and one fails for want of objects, one of the others may be found to be *cy-pres* to that which has failed, and if so, its being approved by the testator ought to be an additional recommendation; but such other charity ought not, as I conceive, to be preferred to some other more nearly resembling that which has failed."

In one case a legacy to the poor was given to poor relations of the testator (*o*), and in another to poor French refugees, the testator having belonged to that class (*p*).

Where there is nothing but a general direction that a fund shall be devoted to charity, as where the gift is for charitable purposes generally, and there is nothing to suggest to what particular objects the donor intended his bounty to be applied, there is of course nothing to guide the Court or the Crown in the disposition of the fund *cy-pres* (*q*).

In such a case, therefore, there is no limit to the charitable purposes for which the fund may be applied (*r*). The Court may, however, in framing a scheme, have regard to other charitable objects specified (*s*).

No presumption that donor intended failed share to go to other specified objects.

Rule stated by Lord Cottenham.

Legacies for poor, &c., given to poor relations.

General direction.

(*k*) *Re Hyde's Trusts*, W. N. 1873, 202; and see *Thorley v. Byrne*, cited 3 Hare, 195, n., a case of application under the sign manual, where a gift to an institution which did not exist was given to another institution intended to be benefited by the same will.

(*l*) *Att.-Gen. v. Ironmongers' Co.*, 10 Cl. & F. at pp. 928, 929.

(*m*) *Ibid.* See, however, *S. C.* 2 My. & K. at p. 586, per Lord Brougham.

(*n*) *Att.-Gen. v. Ironmongers' Co.*, Cr. & Ph. at p. 222. See, also, per Lord Langdale, *ibid.* 2 Beav. at p. 325, and *Re Ashton's Charity*, 27 Beav. 115; and cf. *Mills v. Farmer*, 19 Ves. 482, where the Court directed a scheme to be framed

having regard particularly to the other two objects named. See the decree in that case, stated 1 Mer. App. 722.

(*o*) *Ware v. Att.-Gen.*, cited 3 Hare, 194, n., a case of application by the sign manual.

(*p*) *Att.-Gen. v. Rance*, cited Amb. 422.

(*q*) *Att.-Gen. v. Syderfen*, 1 Vern. 224; 7 Ves. 43, n.; *Pieschel v. Paris*, 2 S. & S. 384; and see cases cited *ante*, p. 29.

(*r*) *Ibid.*; and see *Att.-Gen. v. Boulton*, 2 Ves. Jun. at p. 388; *Re Ashton's Charity*, 27 Beav. at p. 120.

(*s*) *Mills v. Farmer*, 19 Ves. 482; and see *ante*, p. 130.

In one case money directed to be applied in charity was given to St. George's Hospital (u).

Re-modelling Charity.

Objects impracticable or inexpedient.

We now come to the class of cases where an existing charity requires to be re-modelled. This occurs where lapse of time and change of circumstances have rendered it impracticable or inexpedient to adhere strictly to the objects originally named, or where, although some provision may still be made for the original objects, the revenues of the charity have increased out of all proportion to their requirements.

End kept in view, but means varied

In this, as in all cases in which the *cy-près* doctrine is applied, the intention of the founders, so far as it can be ascertained, must be followed.

The end towards which the charitable trusts were originally directed should be kept in view, but the means for attaining that end may be varied from time to time (x).

"You look to the charity which is intended to be created, and you distinguish between it and the means which are directed for its accomplishment. Now the means necessarily vary from age to age. Take a charity such as the present, for the relief of the poor. The condition of the country, or of the locality, may have dictated what were at the time very convenient means for its proper application. In the progress of society, however, with the greater diffusion of wealth, and the growth of population, the means originally devised may become inadequate to the end, and Courts of Equity have always exercised the power of varying the means of carrying out the charity from time to time, so as to secure more effectually the benefits intended" (y).

Applied for same class of persons.

In pursuance of this principle, it is clear in the first place that it would be improper to apply the charity for the benefit of a class of persons different from those originally intended to be benefited. For example, if the intention of the founder was to benefit the poor of a particular parish, that object should be kept in view, and it would be wrong to apply the charity for the benefit of the poor of another parish (z).

(u) *Legge v. Asgill*, cited 3 Haro, 194, n., a case of application under the sign manual.

(x) *Clephane v. Lord Provost of Edinburgh*, L. R. 1 H. L. Sc. 417; *Re Prison Charities*, L. R. 16 Eq. 129; *Att.-Gen. v. Hankey*, *ibid.* 140, n.; *Re Campden Charities*, 18 Ch. D. at p. 326; *Andrews*

v. McGuffog, 11 App. Cas. at p. 325.

(y) Per Lord Westbury in *Clephane v. Lord Provost of Edinburgh*, L. R. 1 H. L. Sc. at p. 421; and see the observations of Lord Lyndhurst in *Ironmongers' Co. v. Att.-Gen.*, 10 Cl. & F. at p. 924; and see further, *ante*, p. 144.

(z) Cf. *ante*, p. 146.

If the founder has expressed a no more specific intention than that the charity shall be applied generally for the benefit of the poor of a particular place, it is obvious that the Court and the Charity Commissioners have a completely free hand in determining in what particular manner the revenues shall be applied for the benefit of poor persons coming within that description.

Benefit of poor of particular place generally.

It has always been held that where the object of a charity is expressed to be the benefit of the poor of a parish, a portion of the income may properly be applied for the education of the children of the poor (a).

May be applied to education.

In *Re Ashton's Charity* (b), property was given to trustees to found almshouses, and 6*l.* per annum was directed to be paid to six almswomen belonging to the Church of England. Other specific payments were directed to be made, and the remainder of the rents and profits was directed to be yearly divided amongst the six almswomen. The income having greatly increased, the surplus was directed to be applied for a Church of England school, the children of Dissenters being admitted on the terms upon which the Court usually admits them.

Re Ashton's Charity.

In *Re Campden Charities* (c), two of the properties which required to be dealt with were (1) property given by Viscount Campden in 1629 to be yearly employed for the benefit of the poor of the town of Kensington as the churchwardens should think proper, and (2) property called Cromwell's Gift, of the trusts of which nothing was known, except that it appeared that it was intended for the benefit of the poor of the parish of Kensington. The annual income of these properties had increased from 10*l.* and 45*l.* to 1,040*l.* and 1,000*l.* respectively.

Re Campden Charities.

The Charity Commissioners settled a scheme by which they appropriated the income to the following objects: (a) the relief of poor deserving objects of the parish in case of sudden accident, sickness, or distress; (b) subscriptions to dispensaries and hospitals in the parish; (c) annuities for deserving and necessitous persons who had resided seven years in the parish; (d) the advancement of the education of children attending elementary schools; (e) premiums for apprenticeship and outfits for poor boys of the parish; (f) payments to encourage the continuance of scholars at public elementary schools above the age of eleven years; (g) exhibitions

(a) *Bishop of Hereford v. Adams*, 7 Ves. 324; *Wilkinson v. Malin*, 2 C. & J. 636; *Re Lambeth Charities*, 22 L. J. Ch. 959; *School Board for London v. Faulconer*, 8 Ch. D. 571; *Re Campden Charities*, 18 Ch. D. 310.

(b) 27 Beav. 115; and see *Ironmongers' Co. v. Att.-Gen.*, 10 Cl. & F. 908.

(c) 18 Ch. D. 310. See further, *Clephane v. Lord Provost of Edinburgh*, L. R. 1 H. L. Sc. 417.

at higher places of education; (h) providing lectures and evening classes.

It was scarcely disputed that this application was within the powers of the Commissioners, the stress of the argument being directed to another property, known as Lady Campden's Charity, hereafter referred to (d).

Relief of
distress.

Where the class intended to be benefited is not the poor of a parish generally but such of the poor as are in want or distress, it would seem that, in the first instance, at any rate, the revenues ought to be applied in the relief of distress and not for educational purposes.

In *Re Lambeth Charities* (e), where the intention was to benefit the poor and needy persons of a parish, it was held that in settling a scheme regard must be had to that intention, and that the revenues ought not to be applied for education.

And in a recent case (f), where the objects of the charity were "sick, aged, and impotent persons," an application for hospital purposes was held to be more in accordance with the donor's intention than an application for educational purposes, and consequently preferable.

Specific direc-
tions as to
application of
revenue.

The case is more difficult where the founder has given specific directions with regard to the application of the revenues; as, for instance, where he has directed them to be applied in payment of apprenticeship fees or to be distributed in doles.

Let us see how the principle that the end is to be kept in view, but that the means may be varied, is applied in such a case.

Apprentice-
ship charity.

Where the founder's direction is that the revenues shall be applied in putting out poor boys of a particular parish as apprentices, the end to be kept in view is to provide the young poor of the parish with such an education as will enable them to gain their livelihood in an honest and respectable manner (g).

How, then, should the direction with regard to apprenticing be dealt with?

Principle
stated by
Jessel, M. R.

In *Re Campden Charities* (h), Jessel, M. R., said, dealing with a direction by the testatrix that a portion of the revenue, which had enormously increased, should be applied in apprenticing poor boys,—“In giving 5*l.* a year to apprentice one poor boy or more she evidently thought that there might occasionally be a chance

(d) See *post*, p. 159.

(e) 22 L. J. Ch. 959; *Re Stanes' Will*, 21 L. T. 261. See also *Re Campden Charities*, 18 Ch. D. 310.

(f) *Att.-Gen. v. Duke of Northumber-*

land, 5 Times L. R. 237.

(g) Per Jessel, M. R., in *Re Campden Charities*, 18 Ch. D. at p. 326.

(h) At p. 325; see also *Ironmongers' Co. v. Att.-Gen.*, 10 Cl. & F. at p. 924.

of more than one boy, but her notion was that there would be enough for one boy, and, no doubt, that was so at that time, and having regard to the 5*l.* a year, which was all she gave. But did she imagine, or can anybody suppose she imagined, she was going to provide 1,100*l.* a year to apprentice any number of boys that might be living in the parish? Of course, she was not dealing with anything of the kind. The amount has so increased that we have no knowledge, nor can we even guess, what she would have done with it if she had anticipated any such increase" (i).

And his Lordship added (j),—"It was actually part of the then legislation, by the Act of 5 Eliz., that nobody should exercise a trade in this country without he had been apprenticed It was the only way in which the poor boys of the parish could be enabled to exercise a trade, and it was not, therefore, that she (the testatrix) desired an apprenticeship *per se*, but she wished to benefit the poor by enabling the poor boys of the parish to earn their living as mechanics or otherwise, having regard to the trades specified in the statute of Queen Elizabeth. That was her object. Times have changed; as I said before, ideas have changed. All that legislation has been repealed. It is no longer obligatory on poor boys to be apprenticed. They can be taught in other ways a knowledge of their trade in much shorter periods, and can thereby be enabled to earn their living. Besides this, the same ideas which produced a change in legislation have also produced a change in the habits of mankind in this country. Apprenticeship, although not quite obsolete, is rapidly becoming so. Fewer masters take apprentices, and fewer boys are apprenticed. Here, again, we must have regard to the existing usages of society, and the existing wants of the poor, who are intended to be benefited."

Change of
circum-
stances.

Accordingly, in such a case it is proper, inasmuch as there are still some masters willing to take apprentices and some boys desirous of being apprenticed, to leave some portion of the fund to be applied in that way; but the residue, which is not required for that purpose, may properly be applied for other similar purposes for the benefit of the poor of the parish (k).

Portion of
fund should
be retained
for appren-
tices.

The next case to be considered is one in which the revenues are directed to be applied in the distribution of doles. Dole charities differ from apprenticeship charities in this, that while the only objection to apprenticeship charities is that apprenticeship is a mode of learning a trade which at the present day is rarely

(i) Cf. the observations of Lord Lyndhurst in *Att.-Gen. v. Ironmongers' Co.*, 10 Cl. & F. at p. 924.

(j) At pp. 325, 326.

(k) See per Jessel, M. R., in *Re Camden Charities*, 18 Ch. D. at pp. 323, 327.

Considered
to be mis-
chievous.

adopted, dole charities are regarded as being positively mischievous.

In *Att.-Gen. v. Marchant* (l), Kindersley, V.-C., said, "I think, by common consent, it is established at the present day that there is nothing more detrimental to a parish, and especially to the poor inhabitants of it, than having stated sums periodically paid to the poor of that parish by way of charity. The poorest class of all is not allowed to participate in such charities, because the Court, in such cases, always excludes those who are in the receipt of parochial relief, inasmuch as that would be a relief to the poor rates, and so a charity to the ratepayers and not to the poor. The only effect of such gifts is to pauperise the parish, that is, to bring into the parish a numerous class of poor persons just above the class of those who are in receipt of pauper relief, but always tending to fall into and increase the last-mentioned class."

In the *Camden Charities Case*, where the portion of the revenues which had been directed to be applied in doles had greatly increased, it was admitted that the practice of giving doles was harmful and should not be extended; and it was said by Jessel, M. R. (m), that, having regard to the change in the amount of the revenues of the charity and in the surrounding circumstances, an intention that the larger sum which had become available should be distributed in doles could not be imputed to the founder.

No part need
be retained
for doles.

In such a case the object to be kept in view is simply the general relief of the poor of the parish, nor is it necessary that any portion of the fund should be retained to be distributed in doles.

"It has been suggested," said Jessel, M. R. (n), "that, inasmuch as a dole is a payment direct to a poor person, in carrying out the new scheme the Court is bound by that portion of the direction of the old scheme or will which directs the dole to be paid in personal payments. The answer is very simple; if you do not direct it to be laid out in doles at all, the mere incident of a dole that it is paid to some person direct, cannot be regarded as a direction given by the testatrix. The testatrix directs the dole to be paid, and nothing else, and the personal payment follows; but if you get rid of the dole altogether, on the ground that it is not longer desirable to keep it in continuance, how can you say you are bound to respect that which is not a direction of the will, but a mere incident to the direction, the personal payment to the poor people? It appears to me that that objection is wholly unfounded." It was consequently held that a fund, directed to be distributed in

(l) L. R. 3 Eq. at p. 431. See also *Re Stanes' Will*, 21 L. T. 261.

(m) 18 Ch. D. at p. 328.

(n) *Ibid.* at p. 330.

doles, could properly be applied towards the relief of distress, and for purposes of education.

Two of the properties which were dealt with in *Re Campden Charities* (o), have already been referred to (p). There was also another property: that was property given by Viscountess Campden in 1643, the annual income of which had increased from 10*l.* to 2,200*l.* The testatrix had directed one half of the income of this property to be paid half-yearly in the church, or the porch thereof, at Kensington, for the better relief of the most poor and needy people of good life and conversation inhabiting the parish of Kensington, and the other half to be applied yearly to put forth one poor boy or more of the said parish to be apprenticed.

Application of apprenticeship and dole charities in *Campden Charities Case*.

The Charity Commissioners had included this property with the other two in the scheme already mentioned (q), and it was held that, subject to certain small variations of detail, the proposed application was proper, and was within the powers of the Commissioners.

For the purpose of elucidating the way in which the principles above laid down are worked out in practice, it may be useful to append a statement of the various objects towards some of which the revenues of charities for the general benefit of the poor are commonly applied in schemes framed by the Charity Commissioners.

Usual modes of applying charities for benefit of poor.

Those objects are as follows:—

1. Subscriptions or donations to a dispensary, infirmary, hospital, or convalescent home, whether general or special, in such a way as to enable the objects of the charity to obtain the benefits of the institution.
2. Subscriptions or donations to a provident club or society established in the neighbourhood for the supply of coal, clothing, or other necessities.
3. Subscriptions or donations to a duly registered provident or friendly society.
4. Contributions towards the provision of nurses for the sick and infirm.
5. Contributions towards the purchase of annuities, whether present or deferred, or the augmentation of any income or other means of support possessed by the recipient which may be proved to the satisfaction of the trustees to be properly secured, and to have been produced by his or her own exertions or providence.

(o) 18 Ch. D. 310.
(p) *Ante*, p. 155.

(q) *Ante*, pp. 155, 156.

6. Contributions towards the cost of the outfit on entering upon a trade or occupation, or into service, of any person under the age of twenty-one years.
7. Contributions towards the provision of the passage money, outfit, or other requisite, in aid of the emigration of any person.
8. Contributions towards the provision or maintenance of a recreation ground, or the formation of a fund for the acquisition or preservation of land as an open space, accessible to the inhabitants of the place in which the charity funds are applicable.
9. Contributions towards the maintenance of a reading-room, library, or working men's club, available for the use or benefit of such inhabitants.
10. Contributions towards the support of any museum, art collection, or art or industrial exhibition, accessible to such inhabitants.
11. Contributions towards the provision of technical or art instruction or lectures.
12. The supply of clothes, linen, bedding, fuel, tools, medical or other aid in sickness, food, or other articles in kind to a limited amount in a year.
13. The supply of temporary relief in money, by way of loan or otherwise, in cases of unexpected loss, or sudden destitution (*r*).

Applications too Remote.

Applications too remote.

Before leaving this part of the subject it may be convenient to enumerate certain cases in which a proposed *cy-près* application has been rejected as being too remote from the founder's intention. Some of these have been already referred to.

Dissenters' charity.

An extension of a charity for a congregation of dissenters to members of the Church of England was refused (*s*).

Almshouse.

Where a charity was founded for almshouses for poor men and women "reduced by sickness, misfortune, or infirmity," it was held that the Court could not, in settling a scheme, sanction the building of a hospital with accommodation for the almspeople (*t*).

(*r*) A suggested addition to the above objects has been the payment of or contribution towards the subscriptions of deserving persons to friendly societies and clubs, intended to secure payments to the members in case of sickness or to their widows and children in case of death. It may be added that schemes of the above kind provide that in no

case shall the funds of the charity be applied directly or indirectly in relief of the rates of the parish. See forms of schemes, *post*, App. II. No. 1, Clause 59. See also *ante*, pp. 104 *et seq*.

(*s*) *Att.-Gen. v. Wansay*, 15 Ves. 231.

(*t*) *Philpott v. St. George's Hospital*, 27 Beav. 107; cf. *Att.-Gen. v. Wrights of Glasgow*, 12 L. T. N. S. 806.

Property devised to the town and commonalty of Grantham for the discharge of the tax of the commonalty to the King for ever, could not be applied to the use of the poor freemen and their widows (*u*).

Charity for town and commonalty.

It was held that a gift for the redemption of British slaves in Turkey and Barbary could not be properly applied for the benefit of pensioners in Greenwich Hospital who were present at the battle of Algiers, or for the Seamen's Hospital Society, or the Royal Naval Benevolent Society, or the Royal Naval School, or the School attached to Greenwich Hospital (*v*).

Redemption of slaves.

Where the trust was for poor prisoners for debt, the maintenance of a school for the children of persons convicted of crime and undergoing sentence was held to be an object too remote from the intention of the donor (*x*).

Prisoners for debt.

In *Re Lambeth Charities* (*y*), it was held that a charity for the poor and needy could not properly be applied to educational purposes unless the primary object was first provided for.

Charity for poor and needy.

On the ground that charitable funds ought not *prima facie* to be applied in relieving the rates, a proposed application will sometimes be objectionable on the ground that it makes provision for objects already provided for by rates (*z*).

Relief of rates.

And where a charity school had been transferred to the school board, it was held that a scheme for the application of the endowment ought to provide that the funds should be applied for the advancement of learning within the school, as by establishing exhibitions, &c., and not for the general purposes of the school, which would merely have the effect of relieving the rates (*a*).

Revenues of school transferred to school board.

And in another case, where the principle of the original foundation was the reformation of vagrants by compulsory labour, a proposed application of one-half of the income in relieving homeless and destitute persons was rejected (*b*).

Reformation by compulsory labour.

Statutory Cy-près Application.

Applications of the *cy-près* principle, even more extensive than that supported by the Court in the *Campden Charities Case*, have been in several instances expressly authorized by the legislature.

Cy-près application directed by legislature.

Thus, under the Endowed Schools Acts, the Charity Commis-

End. Schools Acts.

(*u*) *Att.-Gen. v. Bushby*, 24 Beav. 299.
(*v*) *Att.-Gen. v. Ironmongers' Co.*, Cr. & Ph. at p. 225.

(*z*) *Re Prison Charities*, L. R. 16 Eq. 129.

(*y*) 22 L. J. Ch. 959; and see *Re Stanes' Will*, 21 L. T. 261.

(*z*) *Re Prison Charities*, *supra*; *Att.-Gen. v. Duke of Northumberland*, 5 Times L. R. 237.

(*a*) *Re Poplar and Blackwall Free School*, 8 Ch. D. 543.

(*b*) *Re Bridewell Hospital*, 8 W. R. 718.

sioners, in addition to extensive powers of dealing with educational endowments, are empowered in certain circumstances to apply charities of a non-educational character to educational purposes (*c*).

City of
London
Parochial
Charities Act,
1883.

Again, in dealing with the parochial charities of the City of London, the Commissioners have power to apply property scheduled as ecclesiastical charity property to general ecclesiastical purposes, and property scheduled as general charity property to various charitable purposes, in parts of the metropolis other than the parish in which the trusts of the charity are applicable (*d*).

Commons
Act, 1876.

Another instance may be found in the provision contained in the Commons Act, 1876 (*e*), for the application under the authority of the Charity Commissioners of fuel allotments as recreation grounds and field gardens.

Allotments
Extension
Act, 1882.

Perhaps the widest of all the legislative enactments of this kind is that contained in the Allotments Extension Act, 1882 (*f*), that in every scheme made by the Charity Commissioners in regard to a charity, part of the endowment of which consists of land, a provision must be inserted authorizing the trustees to set aside portions of the land for allotments. This, indeed, can scarcely be called an application of the *cy-près* doctrine, inasmuch as it is a positive direction that part of the charity property shall be applied for allotments, whatever the trusts of the charity may be, and whether they are capable of being carried into effect or not.

Grammar Schools, &c.

Instruction in
grammar
schools for-
merly not
extended
beyond Latin
and Greek.

Many schools have been established in this country, especially during the reign of Edward VI., under the distinctive title of Grammar Schools. "Grammar School" has been generally construed to mean a school for instruction in Latin and Greek; and it has been held that there is no principle of *cy-près* under which the system of education can be extended, as any extension would be contrary to the wish of the founders.

This was laid down in *Att.-Gen. v. Whiteley* (*g*), where Lord Eldon held that the system of tuition at a Free Grammar School which was "confined to the Greek and Latin tongues solely," could not be extended by the employment of masters to teach "writing

(*c*) End. Schools Act, 1869, s. 30, *post*. See also *post*, pp. 171, 172.

(*d*) See City of London Parochial Charities Act, 1883, ss. 13 and 14, *post*.

(*e*) Sect. 19, *post*. See also the provisions as to the application of the property of municipal corporations dissolved under the Municipal Corporations Act, 1883. See sect. 3 of that Act, *post*.

(*f*) Sect. 14, *post*.

(*g*) 11 Ves. 241, 244. See *Att.-Gen. v. Earl of Mansfield*, 2 Russ. 501. Cf. *Att.-Gen. v. Hartley*, 2 J. & W. 353; *Re Highgate School*, 2 Jur. 774; *Re Chipping Sodbury School*, 8 L. J. O. S. Ch. 13; *Att.-Gen. v. Bishop of Worcester*, 9 Hare, at p. 359. The old law relating to grammar schools is practically superseded by the End. Schools Acts: see *post*, pp. 170 *et seq*.

and arithmetic, and the French and German and such other living languages as were usually considered to form the basis of a mercantile or commercial education."

"The question," said his Lordship (*h*), "is not what are the qualifications most suitable to the rising generation of the place where the charitable foundation subsists, but what are the qualifications intended. If upon the instruments of donation the charity intended was for the purpose of carrying on free teaching in what is called a free grammar school, I am not aware, nor can I recollect from any case, what authority this Court has to say the conversion of that institution, by filling a school intended for that mode of education with scholars learning the German and French languages, mathematics, and anything except Greek and Latin, is within the power of this Court. . . . The difficulty is insuperable."

The rule has, however, been relaxed, and it is now settled that provision for the teaching of reading, writing, arithmetic, modern languages, &c., may be properly introduced into a scheme for the management of a free grammar school (*i*). Relaxation of rule.

In *Re Latymer's Charity* (*j*), Romilly, M. R., said: "It is necessary to take into consideration the great alteration that has taken place in education since that period (*i. e.*, when the charity was established). The charity was founded a little under two centuries and a-half from the present time, and the education that was fitting for boys of that period would be a little extended now, and if other means can be found of improving and adding to that, it would be very useful and fully within the scope of the charity" (*k*).

Where a "free school" is not a "free grammar school," the course of education has never been held to be confined to Latin and Greek exclusively, but has always been extended to various branches of elementary learning (*l*). "Freeschool" not being grammar school.

"Free school" does not always mean "free grammar school" (*n*). The term "free school" is flexible, and must be construed according to the context and the usage which has prevailed in the school. It has no reference to the instruction given in the school, but refers to the terms on which the instruction is given; and if grammar Where "free school" means "free grammar school."

(*h*) At p. 247.

(*i*) *Att.-Gen. v. Haberdashers' Co.*, 3 Russ. 530; *Att.-Gen. v. Dixie*, 3 Russ. 534, n.; *Att.-Gen. v. Earl of Devon*, 15 Sim. 193; *Att.-Gen. v. Gascoigne*, 2 My. & K. 647; *Att.-Gen. v. Caius College*, 2 Keen, 150; *Berkhampstead School Case*, L. R. 1 Eq. 102; *Manchester School Case*, L. R. 2 Ch. 497.

(*j*) L. R. 7 Eq. at pp. 358, 359; the

school in this case was not a grammar school properly so called. See also *Re Rugby School*, 1 Beav. 457.

(*k*) These principles correspond closely with those laid down in *Re Campden Charities*, 18 Ch. D. 310; *ante*, pp. 156—158.

(*l*) *Att.-Gen. v. Jackson*, 2 Keen, 541, 551.

(*n*) *Ibid*.

be taught in a school free of charge, it may well be said to be a free school (*o*).

But in the case of a school founded in or before the seventeenth century "for the instruction of children and youth in good literature and learning," the presumption is that it was intended for instruction in the learned languages (*p*).

Instruction in Latin and Greek made imperative by instrument of foundation.

Where a school had been founded by letters patent, and afterwards incorporated by statute, for "the teaching of children in grammar freely, without any exaction or request of money, not exceeding the number of 144," it was held that instruction in Latin and Greek was made imperative by the terms of the foundation (*q*).

Power to extend system of education under 3 & 4 Vict. c. 77.

By the Grammar Schools Act (*r*), Courts of Equity have now the power of extending the system of education in grammar schools (not excepted from the Act) "to other useful branches of literature and science in addition to or (subject to the provisions hereinafter contained) in lieu of the Greek and Latin languages, or such other instruction as may be required by the terms of the foundation or the then existing statutes" (*s*). But, before making any order under this Act, any special visitor or other competent authority is to have an opportunity to be heard (*t*), and the Court must consider the intentions of the founders and benefactors of the grammar school, and its nature and condition (*u*); and unless the revenues of a grammar school are insufficient, the Court is not authorized to dispense with the teaching of Latin and Greek, or to treat instruction therein otherwise than as the principal object of the foundation (*x*). Where the teaching of Latin and Greek is retained, the standard of admission must not be lowered (*y*); and where it is dispensed with, analogous instruction must be substituted (*z*). And the schools are still to be considered as grammar schools, subject to the jurisdiction of the ordinary (*a*).

Where there are several schools in one place, and the revenues of any are insufficient, they may, with the consent of the visitor, patron, and governors of every school to be affected thereby, be united (*b*).

Two clauses of this Act very much limited its utility. One provided that no new statutes affecting the duties or emoluments of any schoolmaster or under-master should be brought into operation as regards any such master "who shall have been

(*o*) *Att.-Gen. v. Bishop of Worcester*, 9 Hare, at p. 358.

(*p*) *Ibid.* at pp. 358, 359.

(*q*) *Berkhamstead School Case*, L. R. 1 Eq. 102.

(*r*) 3 & 4 Vict. c. 77. See App. I., *post*. Grammar schools within the meaning of this Act are also subject to the End. Schools Acts, see *post*, p. 170,

n. (*p*).

(*s*) Sect. 1.

(*t*) *Ibid.*

(*u*) Sect. 2.

(*x*) Sect. 3.

(*y*) Sect. 4.

(*z*) Sect. 5.

(*a*) Sect. 7.

(*b*) Sect. 9.

appointed previously to the passing of this Act (c), without his consent in writing;" but that in case any such master should not consent, but should be willing to resign his office, the governors, or if there should be no governors, the visitor, might assign him a pension (d). The other clause provided that any schoolmaster appointed subsequently to the passing of the Act should receive his appointment subject to such new statutes as might be made and confirmed by the Court in pursuance of any proceedings commenced under the Act within six months after the occurrence of the vacancy on which he was appointed (e).

The result of the two last-mentioned clauses was, that for some years, with rare exceptions, no good schemes for improved education were framed unless the office of master was vacant; and it was by no means generally understood that if a master of a grammar school were once appointed, and no steps for a scheme were taken within six months from the date of the vacancy, he was thenceforth in a position to put a veto on any extension (f).

In settling schemes for schools, many questions have arisen. The most important of these will now be noticed.

Questions arising in settling schemes for schools.
Capitation fees.

A provision may properly be introduced requiring some payment to be made, as, for instance, a small capitation fee, instead of allowing the education to be entirely gratuitous (g). But if the school was originally intended to provide gratuitous education, a certain number of free scholars should continue to be received (h).

A certain number of paying scholars may also be introduced, in addition to those taught gratuitously, but no distinction should be made between them as regards exhibitions and prizes (i).

Introduction of paying scholars.

The case is, however, different where the school is in fact a school for paying scholars, but provision is made for a certain number of foundationers receiving gratuitous education (k).

Where the school was designated a grammar school, but writing and arithmetic in all its branches were directed to be taught, it was held that boys, qualified in other respects, ought to be admitted if they could read English, and were capable of being taught the first elements of grammar. And the Court expressed disapproval of the course which had been adopted, of discouraging the entrance of boys under 12 (l). In a school, founded for providing gratuitous

Qualification for admission.

(c) The Act passed 7th August, 1840.

(d) Sect. 10.

(e) Sect. 11.

(f) Fearon's Endowed Charities, p. 70.

(g) *Berkhampstead School Case*, L. R. 1 Eq. 102; *Re Latymer's Charity*, L. R. 7 Eq. 353.

(h) *Berkhampstead School Case*, *supra*;

Re Latymer's Charity, *supra*.

(i) *Manchester School Case*, L. R. 2 Ch. 497. Cf. also *Re Latymer's Charity*, *supra*.

(k) *Re Rugby School*, 1 Bea. 457.

(l) *Ibid.* See *Att.-Gen. v. Earl of Stamford*, 1 Ph. 737; *Manchester School Case*, L. R. 2 Ch. 497.

education, if some paying scholars are introduced, the free scholars should not be selected by competitive examination (*m*).

Exhibitions
and scholar-
ships.

It is proper to make provision for exhibitions and scholarships if the revenues are sufficient (*n*).

Remunera-
tion of master.

It is very important to provide proper remuneration for a competent master. That remuneration should not be curtailed by expenditure on exhibitions and scholarships. For however useful they may be when the revenues are sufficient, the chief object, after all, is to provide proper instruction (*o*).

Boarders.

In considering the question of the propriety of introducing boarders into free grammar schools, each case must be tried on its own merits. The question often depends upon the construction of the terms of the endowment. The rule which has generally been adopted seems to be that, in the absence of anything authorizing it in the endowment, and in the absence of usage, the master of a free grammar school ought not, except under special circumstances, to be allowed to take boarders (*p*).

If, however, it is found that the revenues of the school are insufficient to provide a competent master without permitting him to take boarders, the scheme may be altered by allowing him to do so; but it seems that such alteration is made reluctantly, and only in cases of necessity (*q*).

It has been laid down by Romilly, M. R., in a judgment deserving careful perusal, that in grammar schools which from their position and neighbourhood are well attended by free scholars, boarders should not be admitted, except to a limited extent, so as not to interfere with the general character of the school; and when a school has attained a great amount of success under either system, *i.e.*, either under a system admitting or rejecting boarders, it is foreign to the duty and practice of the Court to interfere with or alter it (*r*).

(*m*) *Manchester School Case*, L. R. 2 Ch. 497.

(*n*) *Berkhampstead School Case*, L. R. 1 Eq. 102; *Manchester School Case*, *supra*; and see *Re Poplar and Blackwall Free School*, 8 Ch. D. 543. No distinction should be made between paying and free scholars as regards exhibitions and prizes or otherwise: *Att.-Gen. v. Earl of Stamford*, *supra*; per Lord Lyndhurst, *Manchester School Case supra*. *Contrâ*, per Lord Cottenham, in *Att.-Gen. v. Earl of Stamford*, *supra*; *Att.-Gen. v. Ludlow*, 2 Ph. 685; followed in *Sol.-Gen. v. Corporation of Bath*, 18 L. J. Ch. 275.

(*o*) *Att.-Gen. v. Archbishop of York*, 17 Beav. 495. The same case also contains provisions with regard to the attendance and residence of the master.

(*p*) *Att.-Gen. v. Corporation of Gloucester*, 28 Beav. 438; but see *Att.-Gen. v. Bishop of Worcester*, 9 Hare, at p. 363.

(*q*) *Att.-Gen. v. Corporation of Gloucester*, *supra*.

(*r*) *Re Bristol Free Grammar School*, 28 Beav. 172. The masters were allowed to take boarders in the following cases: *Att.-Gen. v. Earl of Stamford*, 1 Ph. 737; *Att.-Gen. v. Bishop of Worcester*, 9 Hare, 328; *Att.-Gen. v. Dean and Canons of Christ Church*, Jac. 474; *Berkhampstead School Case*, L. R. 1 Eq. 102. In the following cases the masters were not allowed to take boarders: *Att.-Gen. v. Earl of Stamford*, 16 Sim. 453; *Att.-Gen. v. Earl of Devon*, 16 Sim. 193; *Re Bristol Free Grammar School*, 28 Beav. 161.

In *Re Latymer's Charity* (t), a charity was founded in 1626 for the purpose of clothing eight poor boys of the town of Edmonton and causing them "to be put to some petty school, to the end they might learn to read English, and there to be so kept until they should attain the age of thirteen years, thereby to keep them from idle and vagrant courses, and also instruct them in some part of God's true religion." The income of the charity having greatly increased, the Court upheld a scheme of the Charity Commissioners containing the following provisions: (1) The establishment of an elementary school confined to the sons of inhabitants of Edmonton and of a superior school not so confined; (2) the payment of capitation fees; (3) the gratuitous education of a certain number of boys in both schools, those in the superior school to be selected by competitive examination, those in the lower for proficiency, good conduct, or poverty; (4) an allowance of clothing for twenty boys attending the lower school, to be selected for merit, regular attendance, good conduct, or poverty.

Elementary
schools.

Where a grammar school is a Church of England school the religious instruction given there must be in accordance with that of the Established Church (u).

Religious
instruction.

The grammar schools of King Edward VI. were founded, not only for teaching grammar, but also for sound religious education, which, looking to the period at which the schools were founded, although nothing be said in the charter, must mean education according to the doctrine and discipline of the Church of England (v). In general, in the case of grammar schools founded by King Edward VI., the Court has only directed generally in the scheme that the scholars shall be instructed in religion, but the mode of instruction has been left to the trustees and visitor (x).

With regard to the nature of schools generally, it has been observed that, "looking to the regulations relative to the licensing of schoolmasters, and regulations in regard to teaching in general, which were not superseded until so late a period as the time of George III., a great deal might be said in support of the position, that foundations for instruction of any kind, at least down to the time of Charles I., involved necessarily religious teaching" (y).

Nature of
schools
founded down
to time of
Charles I.

(t) L. R. 7 Eq. 353.

(u) *Att.-Gen. v. Dean and Canons of Christ Church*, Jac. 474.

(v) *Re Chelmsford Grammar School*, 1 K. & J. 543; *Re Stafford Charities*, 25 Beav. 28; *Att.-Gen. v. Sherborne Grammar School*, 18 Beav. 256; *Re Ilminster School*,

2 De G. & J. 535; *S. C. nom. Baker v. Lee*, 8 H. L. C. 495.

(x) *Att.-Gen. v. Sherborne Grammar School*, *supra*; *Re Stafford Charities*, *supra*.

(y) Per Wood, V.-C., in *Re Chelmsford Grammar School*, 1 K. & J. at p. 566.

Admission of
Dissenters
to Church of
England
schools.

Although a school is in connection with the Church of England, in the absence of any evidence confining the benefit of the charity to members of the Church of England, the children of Dissenters will be admitted to partake, at any rate where there is evidence of usage in their favour (z).

In *Re Iminster School* (a) it was held that the children of Dissenters were properly admitted to a grammar school of King Edward VI.

In one case the Court authorized an application to Parliament to obtain a scheme for admitting children of Dissenters to the benefit of a Church of England school (b).

Exemption of
Dissenters
from religious
teaching.

The question how far the children of Dissenters should be exempted from religious teaching according to the doctrines of the Church of England has in one class of cases been left to the discretion of the head-master (c).

In other cases regard has been paid to the religious scruples of Dissenters, by the introduction of a provision similar to that in *Re Free Grammar School, &c., at Hemsworth* (d).

The former course is that which seems to have been more usually adopted.

Grammar
school not
Church of
England
school.

Where a grammar school is not a Church of England school, a scheme may provide that children of parents who object shall not receive religious instruction or attend church (e).

A testator, in 1614, founded a preachership, a school, and almshouses, but neither by the will nor by the charter of foundation was any provision made as to the religious instruction of the scholars; the charter empowered the governors to make such reasonable statutes for the "good rule and governance" of the school as they should think proper, so long as they were not repugnant to the laws of the realm. Statutes were accordingly made requiring the scholars to attend church and receive religious instruction. It was held by Romilly, M. R., that this was not a Church of England school, and it was ordered that a clause should be inserted in a proposed scheme that no scholar should be compelled to attend church or to receive religious instruction (f).

(z) *Att.-Gen. v. Bishop of Worcester*, 9 Hare, at p. 367; and see *Att.-Gen. v. Sherborne Grammar School*, 18 Beav. 256; *Att.-Gen. v. Clifton*, 32 Beav. 596; *Att.-Gen. v. Bishop of Limerick*, 5 Ir. R. Eq. 403.

(a) 2 De G. & J. 535; *S. C. nom. Baker v. Lee*, 8 H. L. C. 495.

(b) *Att.-Gen. v. Market Bosworth School*, 35 Beav. 305.

(c) *Re King's Grammar School, War-*

wick, 1 Ph. 564; *Att.-Gen. v. Bishop of Worcester*, 9 Hare, at p. 367.

(d) *Infra*. See *Att.-Gen. v. Cullum*, 1 Y. & C. C. C. 411; *Att.-Gen. v. Lord Carrington*, cited 1 Ph. at p. 567.

(e) *Att.-Gen. v. Haberdashers' Co.*, 19 Beav. 385. See also *Att.-Gen. v. Cullum*, 1 Y. & C. C. C. 411; *Att.-Gen. v. Bishop of Limerick*, 5 Ir. R. Eq. 403.

(f) *Att.-Gen. v. Haberdashers' Co.*, *supra*.

Where the regulations by which a school was governed provided that religious instruction according to the Church of England should be given "to such of the boys whose parents or persons standing to them *in loco parentis* shall be in communion with that church, and to such other boys whose parents or other persons standing to them *in loco parentis* shall not object in writing to their receiving such instruction," it was held that the school was not one the scholars at which were required to be educated according to the doctrines of any particular church (*g*).

In the case of an educational as opposed to a religious charity there is, as we have seen, a presumption that no particular religious doctrines were intended to be inculcated, which cannot be rebutted except by a plain expression of intention (*h*).

Presumption
against
religious
restrictions.

The Lord Chancellor, as visitor on behalf of the Crown, may, it seems, grant greater facilities for the exemption of children of Dissenters from particular branches of religious teaching than the Court (*i*).

Lord Chan-
cellor as
visitor on
behalf of
Crown.

The Endowed Schools Act, 1860 (*k*), after reciting that it was expedient that some restrictions upon the government and teaching of certain endowed schools should be removed or modified, enacts that "it shall be lawful for the trustees or governors of every endowed school from time to time to make, and they shall be bound to make, such orders as, whilst they shall not interfere with the religious teaching of the other scholars as now fixed by statute or other legal requirement, and shall not authorize any religious teaching other than that previously afforded in the school, shall nevertheless provide for admitting to the benefits of the school the children of parents not in communion with the church, sect, or denomination according to the doctrines or formularies of which religious instruction is to be afforded under the endowment of the said school: Provided that in the will or wills, deed or deeds, or other instrument or instruments regulating such endowment, nothing be contained expressly requiring the children educated under such endowment to learn or to be instructed according to the doctrines or formularies of such church, sect, or denomination" (*l*).

End. Schools
Act, 1860.

The Act does not apply to any of the institutions mentioned in sect. 24 of the Grammar Schools Act (*m*), or to any school established or to be established by or in union with the National

(*g*) *Re Free Grammar School, &c., at Hemsworth*, 12 App. Cas. 444.

(*h*) *Att.-Gen. v. Calvert*, 23 Beav. 248. See *ante*, p. 116.

(*i*) *Att.-Gen. v. Sherborne Grammar*

School, 18 Beav. at p. 285; *Re Chelmsford Grammar School*, 1 K. & J. at p. 568.

(*k*) 23 & 24 Vict. c. 11.

(*l*) Sect. 1.

(*m*) 3 & 4 Vict. c. 77, App. I., *post*.

Society for promoting the Education of the Poor in the Principles of the Established Church, or to any institution maintained wholly by voluntary subscriptions, or partly by voluntary subscriptions and partly by school payments, or to Scotland or Ireland (*n*).

Endowed Schools Acts.

End. Schools
Acts, 1869,
1873 and 1874.

Finally, the legislature has, by the Endowed Schools Acts, 1869, 1873 and 1874 (*o*), given to the Charity Commissioners specific powers to enable them to supervise, and, where necessary, re-model all kinds of educational endowments (*p*).

Under those Acts the Commissioners are empowered to make schemes for the purpose of rendering educational endowments most conducive to the advancement of education of boys and girls, and may alter and add to existing, and make new, trusts, directions, and provisions, and consolidate and divide endowments (*q*).

Schemes.

The following is an outline of the provisions of these Acts with regard to schemes :—

By any scheme relating to an educational endowment a governing body may be established or removed, and its constitution, rights and powers altered; and corporations incorporated solely for the purpose of the endowment in question may be dissolved (*r*).

Schemes may, with the consent of the Ecclesiastical Commissioners, be made for making increased provision for cathedral schools out of estates of the Church vested in the Ecclesiastical Commissioners (*s*).

In making schemes, due regard must be had to the educational interest of any class of persons (*t*), or persons in a particular class of life (*u*), whose privileges are abolished or modified. And the benefit of endowments must, so far as possible, be extended to girls (*x*).

Provision is made for saving or compensating for certain vested interests (*y*); and schemes may not be made interfering with endowments less than 50 years old at the date of the Act, or with the constitution of the governing body of cathedral schools, schools of Quakers or Moravians, or schools or exhibitions forming

(*n*) 23 & 24 Vict. c. 11, s. 3.

(*o*) *Post*.

(*p*) See End. Schools Act, 1869, s. 5, and notes thereto, *post*. Schools of various kinds are wholly or partially excepted from these Acts. See End. Schools Act, 1869, ss. 8, 14, 19; End. Schools Act, 1873, s. 3. They apply, however, to grammar schools within 3 & 4 Vict. c. 77. See End. Schools Act, 1869, s. 8; and End. Schools Act, 1873, s. 3.

(*q*) End. Schools Act, 1869, s. 9, *post*.

(*r*) *Ibid*. s. 10, *post*.

(*s*) *Ibid*. s. 27.

(*t*) *Ibid*. s. 11, and cases cited in notes thereto, *post*.

(*u*) End. Schools Act, 1873, s. 5, *post*.

(*x*) End. Schools Act, 1869, s. 12, *post*.

(*y*) *Ibid*. s. 13.

part of the foundation of any Oxford or Cambridge college (other than one restricted to a school or district), except with the assents therein mentioned (*z*).

Provision is made with regard to religious education in day schools (*a*), and in boarding schools (*b*). Members of the governing body are not to be disqualified on the ground of religious opinions (*c*), and masters need not be in holy orders (*d*). Certain exemptions are provided from the foregoing provisions as to religion (*e*), and where the scheme gives the governing body power to make regulations as to religious instruction, it must provide for a year's notice of alterations to be given (*f*).

The scheme may provide for the transfer of visitatorial jurisdiction to the Queen, to be exercisable by and through the Charity Commissioners (*g*); it must abolish the jurisdiction of the ordinary as to licensing masters (*h*), must provide for the dismissal of teachers, &c., at pleasure (*i*), and may contain such general powers and provisions as may be expedient (*k*). And provision is made for the alteration of schemes (*l*).

A scheme relating to an endowment attached to a school for paying apprenticeship fees, or the advancement, maintenance, clothing, or otherwise of children, may provide for the continued application of the endowment to those purposes (*m*).

An elaborate procedure is provided for the establishment of schemes, and provision is made for appeals to the Queen in Council (*n*).

A number of miscellaneous provisions are also inserted with regard to the effect of schemes when made, and as to obtaining evidence, production of documents, inquiries, and otherwise (*o*).

Subject to certain provisions for apportionment and otherwise, an endowment, partly applicable to educational purposes, and partly to other charitable uses, may be dealt with as though the whole were an educational endowment (*p*). And provision is made for distinguishing old and new endowments where mixed (*q*).

The Endowed Schools Act, 1869, also expressly authorizes a Application of non-

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| (<i>z</i>) <i>Ibid.</i> s. 14. | (<i>k</i>) <i>Ibid.</i> s. 23. |
| (<i>a</i>) <i>Ibid.</i> s. 15. | (<i>l</i>) <i>Ibid.</i> ss. 28 and 44; End. Schools |
| (<i>b</i>) <i>Ibid.</i> s. 16. | Act, 1873, s. 10, <i>post</i> . |
| (<i>c</i>) <i>Ibid.</i> s. 17; End. Schools Act, | (<i>m</i>) End. Schools Act, 1869, s. 29, |
| 1873, s. 6, <i>post</i> . | <i>post</i> . |
| (<i>d</i>) End. Schools Act, 1869, s. 18. | (<i>n</i>) <i>Ibid.</i> ss. 31—43, and see note to sect. |
| (<i>e</i>) <i>Ibid.</i> s. 19; End. Schools Act, | 32; End. Schools Act, 1873, ss. 12—15, |
| 1873, s. 7, <i>post</i> . | <i>post</i> . |
| (<i>f</i>) End. Schools Act, 1873, s. 11, | (<i>o</i>) End. Schools Act, 1869, ss. 45—57, |
| <i>post</i> . | <i>post</i> . |
| (<i>g</i>) End. Schools Act, 1869, s. 20, | (<i>p</i>) <i>Ibid.</i> s. 24, <i>post</i> . |
| <i>post</i> . | (<i>q</i>) <i>Ibid.</i> ss. 25, 26; End. Schools |
| (<i>h</i>) <i>Ibid.</i> s. 21. | Act, 1873, s. 8, <i>post</i> . |
| (<i>i</i>) <i>Ibid.</i> s. 22. | |

educational endowments to educational purposes.

very extensive application of the principle of *cy-près*, with reference to charities of a non-educational character.

By sect. 29 of the Act (s), endowments attached to a school for the payment of apprenticeship fees, or the advancement in life, or maintenance or clothing, or otherwise for the benefit of children educated at such school, are to be deemed to be educational endowments, and may therefore be dealt with as such.

Non-educational endowments applied to education.

And by sect. 30 (t), the Charity Commissioners are empowered, with the consent of the governing body, by scheme to devote to educational purposes endowments for any of the following purposes, namely, doles in money or kind; marriage portions; redemption of prisoners and captives; relief of poor prisoners for debt; loans; apprenticeship fees; advancement in life; or any purposes which have failed altogether, or have become insignificant in comparison with the magnitude of the endowment, if originally given to charitable uses in or before the year 1800. But due regard must be had to the educational interests of persons of the same class in life, or resident within the same particular area, as those who at the commencement of the Act were benefited thereby; and no open space at the commencement of the Act enjoyed or frequented by the public may be enclosed in any other manner than it might have been if the Act had not passed.

Powers of Court not restricted by pendency of scheme under this section.

So long as a scheme has not been made devoting a non-educational charity to educational purposes, the mere pendency of such a scheme before the Commissioners is no obstacle to the exercise by the Court of its jurisdiction to settle a scheme for the management of the charity (u).

Duration of powers.

The powers conferred by the Endowed Schools Acts are intended to be of limited duration, and are now being extended from year to year by the Expiring Laws Continuance Acts (x).

Transfer to School Board.

How endowment dealt with on transfer to School Board.

A difficulty has sometimes arisen where an existing charity school has been transferred to a school board under the Elementary Education Acts, 1870 and 1873 (y), and it has consequently been necessary to prepare a new scheme for the application of the

(s) *Post.*

(t) *Post.*

(u) *Re Charitable Gifts for Prisoners*, L. R. 8 Ch. 199. If the scheme has been actually made, the powers of the Court are restricted: see *End. Schools Act*, 1869, s. 52; *End. Schools Act*, 1874, s. 6, *post.*

(x) See n. (c) to sect. 6 of the *End. Schools Act*, 1874, *post.* With regard to the principles adopted by the Charity Commissioners in settling schemes under the *End. Schools Acts*, see notes to sect. 9 of the *End. Schools Act*, 1869, *post.*

(y) 33 & 34 Vict. c. 75; 36 & 37 Vict. c. 86. See further, *post*, p. 256.

revenue. It was said by Jessel, M. R. (z), that in such cases application of the fund to the general purposes of the school was objectionable, because that was really a grant in aid of rates and not strictly for the benefit of the school; and that the fund should be applied, either by way of establishing exhibitions, or scholarships, or otherwise for the advancement of learning in the school.

Where a school has been transferred to a school board, no religious teaching peculiar to any particular denomination can afterwards be given in it (a). No special religious teaching.

SECTION III.

APPORTIONMENT OF CHARITIES.

We have already seen that upon the increase of the income of a charity an apportionment is in some cases made among the objects of the charity (b). Increased income.

Again, where there was a charitable gift to the inhabitants of a certain locality, as the poor of a city, and other parishes were afterwards admitted within its precincts, an apportionment was made by the Court in favour of such parishes (c). New objects admitted to participate.

The Court has jurisdiction to apportion certain charities under 8 & 9 Vict. c. 70, entitled "An Act for the further Amendment of the Church Building Acts." That Act, after reciting various Acts (d) relating to the building of additional churches, and conferring new powers on Her Majesty's Commissioners for Building New Churches (e), enacts (f),—"That where her Majesty's said Commissioners shall have already formed or shall hereafter form any distinct or separate parish, district parish, or district chapelry, under the provisions of the hereinbefore recited Acts, or any of them, or this Act, out of any parish or extra-parochial place, it shall be lawful for the Court of Chancery, anything in the herein-

(z) *Re Poplar and Blackwall Free School*, 8 Ch. D. at p. 545.

(a) *Elem. Educ. Act*, 1870, s. 14.

(b) *Ante*, pp. 137 *et seq.*

(c) *Att.-Gen. v. Mayor of Rochester*, Rep. t. Finch, 193; *ibid.* 6 Sim. 273, 322; and see *Att.-Gen. v. Grant*, 1 P. Wms. 669.

(d) The Acts recited are: 58 Geo. III. c. 46; 59 Geo. III. c. 134; 3 Geo. IV.

c. 72; 5 Geo. IV. c. 103; 7 & 8 Geo. IV. c. 72; 1 & 2 Will. IV. c. 38; 2 & 3 Will. IV. c. 61; 7 Will. IV. & 1 Vict. c. 75; 1 & 2 Vict. c. 107; 2 & 3 Vict. c. 49; 3 & 4 Vict. c. 60; 7 & 8 Vict. c. 56.

(e) Now the Ecclesiastical Commissioners: 19 & 20 Vict. c. 55.

(f) Sect. 22.

apportion-
ment.

has power to discharge an old order of apportionment and to make a new one (*s*). Accordingly, where there had been an order for apportionment, and in a scheme of the Charity Commissioners for the general regulation of the charity, a direction was inserted that the trustees should have regard to such order, but the order was found to be unworkable, the Court altered it (*t*).

Application
by petition.

Applications under this Act are made by petition, which must be intituled in the matter of 52 Geo. III. c. 101, as well as in the matter of this Act (*u*).

Apportion-
ment by
Charity Com-
missioners.

By the Charitable Trusts Amendment Act, 1855, power is given to the Charity Commissioners to apportion charities after a division of parishes where the gross annual income does not exceed 30*l.* (*x*); and the certificate of the Commissioners is evidence as to the amount of the annual income (*y*).

This power is expressly limited to charities the income of which does not exceed the specified amount (*z*).

(*s*) *Re Campden Charities* (No. 2), 24 Ch. D. 213.

(*t*) *Ibid.*

(*u*) *Re West Ham Charities*, 2 De G. & Sm. 218; *Re Campden Charities* (No. 2), *supra*. See *post*, p. 335. For form of order directing inquiries as to charities and apportionment and directions to ap-

prove a scheme, see Set. 4th ed. p. 552, No. 7.

(*x*) Sect. 10, *post*; and see notes thereto.

(*y*) Sect. 11; see also sects. 13 and 14.

(*z*) *Att.-Gen. v. Love*, 23 Beav. at p. 506.

CHAPTER VII.

APPOINTMENT AND REMOVAL OF TRUSTEES.

THE estates of charities may, as we have seen (*a*), be vested either in individual trustees or in corporations, whether aggregate or sole (*b*).

Charity estates vested in individual trustees or corporations. Corporations merely trustees, or themselves objects of charity.

In the case of charities vested in corporations, the corporations may be merely trustees for carrying the charitable purposes into effect, or they may be themselves beneficially interested in and participants of the charity. As instances of the first class may be mentioned the numerous cases where civil corporations are trustees of charitable property, and also various eleemosynary and spiritual corporations (*c*). Of the second class instances will be found among eleemosynary corporations, such, for example, as hospitals where the master and poor together form the corporation (*d*).

But if the trust is purported to be vested in a corporation, it must be a corporation which actually exists. Thus, it was held that a bequest for charitable purposes to certain "Roman Catholic bishops and their successors" could not be supported, for no such corporate characters were recognized by the law (*e*).

Corporation must be existing.

The particular bishops named could, like any other trustees, execute the trusts, subject to the direction of the Court, during their lives, but the trusteeship would not pass to their successors in office (*f*).

Although corporations are kept up by a continual succession of members, so as to endure for ever, yet, even where a corporation are trustees, it may, under special circumstances, become necessary to appoint new trustees in their place.

Appointment of trustees in place of corporation ;

Thus we have seen (*g*) that sometimes a corporation guilty of a breach of trust may be divested of their trust.

(*a*) *Ante*, p. 67.

(*b*) With regard to charitable trusts being vested in corporations sole, as parsons and vicars, see *Att.-Gen. v. Ruper*, 2 P. Wms. 125; *Hopkinson v. Ellis*, 5 Beav. 34; and *ante*, p. 67.

(*c*) *Ante*, p. 69.

(*d*) *Ibid.*

(*e*) *Att.-Gen. v. Power*, 1 Ball & B. 145, 149. See also *Att.-Gen. v. Lee*, 4 Ir. R. Eq. 84.

(*f*) *Ibid.*

(*g*) *Ante*, p. 96.

Another case where the appointment of trustees in place of a corporation becomes necessary arises where the corporation has become extinct (*h*). So, also, in the case of municipal corporations divested of estates held by them upon charitable trusts by the Municipal Corporations Act, 1835 (*i*).

in place of
individual
trustees.

Where the charity estates are vested in individual trustees the appointment of new trustees is, of course, from time to time required.

Appointment
under express
power.

A power to appoint new trustees in certain events is generally inserted in the instrument of foundation of a charity or the scheme by which it is regulated.

Provision
construed as
directory.

In cases of charitable trusts, where the Courts have adopted a greater latitude of construction than in ordinary cases, directions to appoint new trustees on the happening of a certain event have been considered to be merely directory, and not to confine the exercise of the power to the happening of that event only.

Thus, where six trustees were appointed, and it was directed that when the trustees were reduced to three they should choose others, it was held that an appointment by the sole surviving trustee was good (*k*). And this may be the case even when the direction is contained in an Act of Parliament (*l*).

Where there were twenty-five trustees, and the direction was, that when the number was reduced to fifteen the survivors should elect new trustees, it was held that the survivors, although seventeen in number, were at liberty to exercise their power, but that when they were reduced to fifteen they were compellable so to do (*m*).

Enrolment.

The conveyance to new trustees of real estate already in mortmain does not require enrolment (*n*).

Usage.

Where the deed of trust is lost, the mode of appointing new trustees must be determined by the earliest evidence of usage, it being presumed that what was then done was rightly done (*o*).

In *Att.-Gen. v. Dalton* (*p*), an estate was, in 1671, purchased out of parish funds, and conveyed to the rector, churchwardens, and twelve parishioners, for the relief of the poor inhabitants.

(*h*) *Re Conyers' School*, 10 Hare, App. v., post, p. 186.

(*i*) 5 & 6 Will. IV. c. 76, post, pp. 196 et seq.

(*k*) *Att.-Gen. v. Floyer*, 2 Vern. 748; *Att.-Gen. v. Bishop of Litchfield*, 5 Ves. 825; *Att.-Gen. v. Cuming*, 2 Y. & C. C. 139; but see *Foley v. Wontner*, 2 J. & W. 245; and cf. *Att.-Gen. v. Scott*, 1 Ves. Sen. at p. 415. See further Note A in App. III. to this Book.

(*l*) *Doe v. Godwin*, 1 D. & R. 259.

(*m*) *Doe v. Roe*, 1 Anst. 86, 91.

(*n*) *Ashton v. Jones*, 28 Beav. 460. See sect. 4, sub-sect. (9), of the Mortmain and Charit. Uses Act, 1888, and note (*n*) thereto, post.

(*o*) As to evidence of usage, see ante, pp. 110 et seq. See also *Att.-Gen. v. St. Cross Hospital*, 17 Beav. 435; *Att.-Gen. v. Ewelme Hospital*, ibid. 366.

(*p*) 13 Beav. 141. Cf. *Att.-Gen. v. Pearson*, 3 Mer. at pp. 402, 403.

The deed was lost. New trustees were appointed by deed in 1701, which recited that the deed of 1671 provided that when the trustees were reduced to five, they should convey the premises to themselves and eleven other parishioners. In 1725, 1769, 1782, and 1806, new trustees were appointed by the parishioners, but on each of the last three occasions the deed contained a proviso that the new trustees should be nominated by the five survivors. In 1831 and 1842 new trustees were appointed by the survivors. It was held that the last appointments were invalid, and that the right of nominating new trustees belonged to the parishioners, and not to the surviving trustees, and the legal estate was presumed to be vested in the persons to whom it was purported to be conveyed, notwithstanding some irregularities.

And an inquiry may be directed who are entitled to propose Inquiry trustees (g).

There are also certain statutory provisions, under which new trustees of charities may in certain cases be appointed without the necessity of applying to the Court or to the Charity Commissioners. Statutory powers.

A provision of this kind is contained in the Act, commonly known as Sir Morton Peto's Act (r), which relates to property acquired by a congregation or society for religious or educational purposes, and provides not only for the appointment of new trustees, but also for the vesting of the charity property in the successive trustees without conveyance. Peto's Act
Dissenting
chapels.

By that statute it is enacted that "wherever freehold, leasehold, copyhold, or customary property in England or Wales has been or hereafter shall be acquired by any congregation or society or body of persons associated for religious purposes, or for the promotion of education, as a chapel, meeting-house, or other place of religious worship, or as a dwelling-house for the minister of such congregation, with offices, garden, and glebe, or land in the nature of glebe, for his use, or as a schoolhouse, with a schoolmaster's house, garden, and playground, or as a college, academy, or seminary, with or without grounds for air, exercise, or recreation, or as a hall or rooms for the meeting or transaction of the business of such congregation or society or body of persons, and wherever the conveyance, assignment, or other assurance of such property has been or may be taken to or in favour of a trustee or trustees to be from time to time appointed, or of any party or parties named in Sect. 1.

(g) *Davis v. Jenkins*, 3 V. & B. 151.

(r) 13 & 14 Vict. c. 28.

such conveyance, assignment, or other assurance, or subject to any trust for the congregation or society or body of persons, or of the individuals composing the same, such conveyance, assignment, or other assurance shall not only vest the freehold, leasehold, copyhold, or customary property thereby conveyed or otherwise assured in the party or parties named therein, but shall also effectually vest such freehold, leasehold, copyhold, or customary property in their successors in office for the time being, and the old continuing trustees, if any, jointly, or if there be no old continuing trustees, then in such successors for the time being wholly, chosen and appointed in the manner provided or referred to in or by such conveyance, assignment, or other assurance, or in any separate deed or instrument declaring the trust thereof, or if no mode of appointment be therein set forth, prescribed, or referred to, or if the power of appointment be lapsed, then in such manner as shall be agreed upon by such congregation or society or body of persons, upon such and the like trusts, and with, under, and subject to the same powers and provisions, as are contained or referred to in such conveyance, assignment, or other assurance, or in any such separate deed or instrument, or upon which such property is held, and that without any transfer, assignment, conveyance, or other assurance whatsoever, anything in such conveyance, assignment, or other assurance, or in any such separate deed or instrument, contained to the contrary notwithstanding: Provided always, that in case of any appointment of a new trustee or trustees of or the conveyance of the legal estate in any such property being made as heretofore was by law required, the same shall be as valid and effectual to all intents and purposes, as if the Act had not been passed" (s).

Sect. 3.

"That for the purpose of preserving evidence of every such choice and appointment of a new trustee or new trustees, and of the person and persons in whom such charitable estates and property shall so from time to time become legally vested, every such choice and appointment of a new trustee or new trustees shall be made to appear by some deed under the hand and seal of the chairman for the time being of the meeting at which such choice and appointment shall be made, and shall be executed in the presence of such meeting, and attested by two or more credible witnesses, which deed may be in the form or to the like effect of the schedule to this Act annexed, or as near thereto as circumstances will allow, and may be given and shall be received as evidence in

(s) Sect. 1.

all courts and proceedings, in the same manner and on the like proof as deeds under seal, and shall be evidence of the truth of the several matters and things therein contained" (t).

This Act was intended to apply to property held upon charitable uses (u).

Applies to property held on charitable uses.

It seems open to doubt whether trustees appointed under this Act do not take merely the legal estate, and whether, therefore (in the absence of provision in the instrument of foundation), they can exercise the powers possessed by the old trustees (x).

Whether trustees appointed under Act take more than legal estate.

It was in one case considered doubtful whether new trustees of a chapel vested in trustees on trusts in accordance with the Wesleyan constitution could be appointed under Peto's Act (y). The reason given was that the effect of the Wesleyan model deed, upon the trusts of which the chapel in question seems to have been held, was to vest the chapel in trustees, not for a particular congregation, but for the whole Wesleyan connexion, and that an appointment by that body was impracticable (z). Wood, V.-C., in giving judgment (a), said that although much was to be said in favour of the Act applying to that society, inasmuch as the constitution of Methodism recognized the existence of such societies as members of a larger body, still that his own impression was that the Act did not apply either to the Methodist body generally or to the particular congregation; that in order to bring a society within the Act it was requisite that there should have been property acquired by the congregation or society and held upon trust for them.

When Act applies—Wesleyan chapel.

In the case, however, of an Independent chapel it was treated as clear that new trustees could be appointed under this Act at a meeting of the body called "church members," in whom the appointment of new trustees was vested (b).

Independent chapel.

By 32 & 33 Vict. c. 26, the provisions of Peto's Act were extended to burial grounds.

Peto's Act extended to burial grounds.

The Act, after reciting Peto's Act, provides as follows: "Wherever freehold, leasehold, copyhold, or customary property in England or Wales has been or hereafter shall be acquired by any congregation or society or body of persons associated for religious purposes as a burial ground, whether in use or closed, all the provisions in the said recited Act made applicable to a chapel, meeting house, or other place of religious worship shall be applicable to such burial ground, and this Act and the said recited Act shall be

(t) Sect. 3.

(u) *Bunting v. Sargent*, 13 Ch. D. at p. 336.

(x) *Lowin on Trusts*, 8th ed. p. 852.

(y) *Re Hoghton Chapel*, 2 W. R. 631.

(z) *Ibid.*

(a) At p. 632.

(b) *Bunting v. Sargent*, *supra*.

construed as one Act: Provided always, that nothing herein contained shall in any way interfere with the Burial Acts."

Conveyancing
Act, 1881.

The provisions of the Conveyancing and Law of Property Act, 1881 (c), as to the appointment of new trustees and the vesting of trust property, apply in the case of charities (d).

Where the power of appointing new trustees contained in the instrument of foundation (e) did not contemplate the case of a trustee being absent from the United Kingdom for more than twelve months, it was held not to show a contrary intention, within sub-s. (7) of sect. 31 of the Conveyancing and Law of Property Act, 1881, so as to exclude the exercise of the power given by that Act to appoint a new trustee in the place of one who has been out of the United Kingdom for more than twelve months (f). It seems that the retiring trustee need not join in the appointment (g).

Devolution of
power of ap-
pointment
vested in
vestry.
Municipal
corporation.

The power of an old vestry to appoint new trustees devolves on the vestry constituted by the Metropolis Local Management Act, 1855 (h).

So, also, any powers in relation to charities possessed by a municipal corporation to which the Municipal Corporations Act, 1835, applied, passed, so far as they were not abolished, to the corporation as reformed by that Act (i).

Transfer to
County
Councils.

By sect. 64 of the Local Government Act, 1888 (k), it is provided that "all property of the quarter sessions of a county, or held by the clerk of the peace, or any justice or justices of a county, or treasurer, or commissioners, or otherwise for any public uses and purposes of a county, or any division thereof, shall pass to and vest in and be held in trust for the council of the county, subject to all debts and liabilities affecting it, and shall be held by the county council for the same estate, interest, and purposes, and subject to the same covenants, conditions, and restrictions, for and subject to which that property is or would have been held if this Act had not passed, so far as those purposes are not modified by this Act: Provided that—

"(b) Where any property belongs to a charity, nothing in this Act shall affect the trust of such charity, and until otherwise directed by the Charity Commissioners for England and Wales, the trustees

(c) 44 & 45 Vict. c. 41, ss. 31—34.

(d) *Re Coates to Parsons*, 34 Ch. D. 370.

(e) *The Wesleyan Model Deed*. See *ante*, p. 121.

(f) *Re Coates to Parsons*, *supra*.

(g) *Ibid*.

(h) *Re Hayle's Estate*, 31 Beav. 139. See, however, *Att.-Gen. v. Drapers' Co.*, 4 Dr. 299.

(i) *Att.-Gen. v. Phillimore*, 9 L. J. Ch 338.

(k) 51 & 52 Vict. c. 41.

or managers of the charity shall be appointed in like manner as if this Act had not passed."

It would appear that charities applicable "for any public uses and purposes of a county" of which the estates are not vested in any of the persons mentioned in the above section, although they may be managed by such persons, remain unaffected by the Act. But if the charity estates are vested in any of the above persons, it seems that the effect of the section is to transfer the estates to the county council, leaving the management of the charity in the hands of the persons in whom it would have been if the Act had not passed. A question seems likely to arise on this section, whenever it becomes necessary to determine precisely what is included in the words "any public uses and purposes of a county or any division thereof."

Appointment and Removal by Court.

In cases where no other means by which trustees can be appointed are available, recourse must be had to the Court or the Charity Commissioners. Appointment by Court.

The Court of Chancery always had jurisdiction upon information to appoint new trustees of charities (*l*), and also to remove existing trustees (*m*). This jurisdiction is now exercised by the Chancery Division, and procedure by action is substituted for procedure by information (*n*). Action.

By Romilly's Act (*o*) power was conferred upon the Court to appoint new trustees of charities upon petition (*p*). But there is no power under that Act to add to the number of trustees limited by the foundation (*q*). Romilly's Act.

In order to prevent the expense occasioned, when all the trustees of a charity were dead, in making out the title of the representative of the last surviving trustee, it is provided by 2 & 3 Will. IV. c. 57, s. 3 (*r*), that where all the trustees of any estate for any charity or charitable or public purpose are dead, the Court (*u*) may, on 2 & 3 Will. IV. c. 57.

(*l*) *Att.-Gen. v. Stephens*, 3 My. & K. 347; *Att.-Gen. v. Clark*, 1 Beav. 467.

(*m*) See *ante*, p. 88 *et seq.*

(*n*) *Post*, p. 315.

(*o*) 52 Geo. III. c. 101.

(*p*) *Bignold v. Springfield*, 7 Cl. & F. 71. As to procedure, see *post*, pp. 328 *et seq.*

(*q*) *Re Storey's Almshouses*, 9 L. J. Ch. 93.

(*r*) This section embodied and extended sect. 23 of 11 Geo. IV. & 1 Will. IV.

c. 60, which was repealed by sect. 1 of the Trustee Act, 1850 (13 & 14 Vict. c. 60). The whole of 2 & 3 Will. IV. c. 57, except sect. 3, was repealed by the Stat. Law Rev. Act, 1874. See *Re St. Antholin Trust Estates*, 7 L. J. Ch. 269; *Att.-Gen. v. Randles*, 8 Beav. 185. And for a case on the repealed Act 57 Geo. III. c. 39, see *Re a Friendly Society*, 1 S. & S. 82.

(*u*) In the Act the Court of Chancery, now the Chancery Division.

petition in a summary way, require by advertisement the representative of the last surviving trustee to appear or give notice of his title within twenty-eight days, and prove his pedigree or other title as trustee, and in default the Court is authorized to appoint new trustees, and to order a conveyance to be made to them of the trust property (x).

Trustee Act,
1850.

There is also jurisdiction under the Trustee Act, 1850 (y), to make orders appointing new trustees either in substitution for or in addition to any existing trustee or trustees. But the Court cannot under this Act remove a trustee who is willing to act (z).

Under sect. 45 of the same Act the Court is enabled to vest, without conveyance, any lands, stock, or chose in action, in the trustee or trustees of any charity or society over which the Court would have jurisdiction upon suit duly instituted, whether such trustee or trustees shall have been duly appointed under any power contained in any deed or instrument, or by decree of the Court, or by order made upon petition to the Court under any statute authorizing the Court to make an order to that effect in a summary way upon petition (a).

Appointment
of trustees in
place of
judges of
County Pala-
tine of Chester
and Principa-
lity of
Wales.
Chambers.

By 11 Geo. IV. & 1 Will. IV. c. 70, by which the jurisdiction of the County Palatine of Chester and Principality of Wales was abolished, the Lord Chancellor was empowered to appoint new trustees of any charitable or public trust cast by virtue of their offices upon the judges of the Courts abolished by the Act (b).

Where the gross annual income of the charity exceeds 30*l.*, orders for the appointment and removal of trustees may be made at chambers in all cases in which they might formerly have been made by the Court of Chancery or by the Lord Chancellor, intrusted with the care and commitment of the custody of lunatics in a suit regularly instituted or upon petition (c).

R. S. C. 1883,
Ord. LV.
r. 13 a.

And now, by R. S. C. 1883, Ord. LV. r. 13a, it is provided that in all cases where the Court has jurisdiction to appoint new trustees on petition, they may be appointed upon summons at chambers.

(x) For form of order, see *Re Nightingale's Charity*, 3 Hare, at p. 338; *Re Belke's Charity*, 13 Jur. 317.

(y) 13 & 14 Vict. c. 60, s. 32.

(z) Lewin on Trusts, 8th ed. p. 853, n.

(a) In *Re Basingstoke School*, Set. 4th ed., p. 565, a person was appointed to convey an outstanding legal estate under a scheme approved by the Court. Another unreported case, *Re Norton Folgate*, is also cited in Set. 4th ed., p. 565, where the

jurisdiction under this section was exercised.

(b) Sect. 31. See *Re Robinson's Charity*, 3 De G. M. & G. 188, where it was held that the jurisdiction might be exercised by a vice-chancellor.

(c) Charit. Trusts Act, 1853, s. 28, and notes thereto, *post*. See *Re Davenport's Charity*, 4 De G. M. & G. 839. As to procedure, see *post*, pp. 337 *et seq.*

The summons must be intituled in the same manner and served upon the same persons as the petition should have been.

Under the jurisdiction given by sect. 28 of the Charitable Trusts Act, 1853, vesting orders under the Trustee Acts may be made at chambers. This was held by Lord Cranworth in *Re Davenport's Charity* (d), where the surviving trustee was a lunatic.

Vesting orders
at chambers.

This case does not seem to have been brought to the notice of Stuart, V.-C., in *Re Lincoln Primitive Methodist Chapel* (e), where it was held that a petition was necessary.

By sect. 29 of the Charitable Trusts Act, 1853 (f), similar jurisdiction to that conferred by sect. 28 upon a judge at chambers is given to the Chancellor and Vice-Chancellor of the Duchy and County Palatine of Lancaster.

Palatine
Court.

Similar orders may also be made by the County Courts where the gross income of the charity does not exceed 50*l.* (g), and the certificate of the Charity Commissioners is sufficient evidence of the income of the charity to determine the jurisdiction (h). But no order of a County Court for the appointment or removal of trustees of a charity is valid unless confirmed by the Charity Commissioners (i).

County
Courts.

New trustees are appointed by the Court for the purpose of filling up vacancies occasioned by death (k), or where the appointment is rendered necessary by incapacity (l), bankruptcy (m), unfitness (n), or unwillingness to act on the part of the old trustee or trustees (o).

In what cases
new trustees
appointed by
Court.

Where a testator appointed as trustee of a foreign charity the holder of a public office which was abolished before his death, new trustees were appointed (p).

Trustee pre-
deceasing
testator.

In a case where trustees of a chapel had been elected in the place of trustees dead, abroad, and declining to act, the election was confirmed on summons at chambers (q).

Appointment
confirmed at
Chambers.

New trustees are also appointed where existing trustees are

Where trust-
ees removed

(d) 4 De G. M. & G. 839.

(e) 1 Jur. N. S. 1011. In this case it was held that it was sufficient for the petition to be entitled in the Charit. Trusts Act, 1853, and the Trustee Act, 1850, and that it need not be presented under Romilly's Act. See *post*, p. 336.

(f) *Post*.

(g) Charit. Trusts Act, 1853, s. 32; Charit. Trusts Act, 1860, s. 11.

(h) Charit. Trusts Act, 1853, s. 44; County Court Rules, 1889, Ord. XLVIII. r. 18; and see *post*, pp. 343 *et seq.*

(i) Charit. Trusts Act, 1853, s. 36.

(k) *Drayson v. Pocock*, 4 Sim. 283; *Finlay v. Howard*, 2 Dr. & W. 490; *Re*

Nightingale's Charity, 3 Hare, 336.

(l) See *Bennett v. Honeywood*, Amb. at p. 710.

(m) *Bainbrigg v. Blair*, 1 Beav. 495; *Re Roche*, 1 Con. & L. 306.

(n) *Commissioners of Charitable Donations v. Archbold*, 11 Ir. Eq. R. 187.

(o) *Re Beverley Charities*, 9 L. J. Ch. 91.

(p) *Att.-Gen. v. Stephens*, 3 My. & K. 347. See also cases as to trusts not failing because trustees disclaim, *ante*, p. 32.

(q) *Re Lincoln Primitive Methodist Chapel*, 1 Jur. N. S. 1011.

for misconduct.

removed for misconduct, as where they have committed breaches of trust (*r*).

Innocent breach of trust.

Innocent misapplication of the trust fund is not, however, necessarily a ground for the removal of the trustees (*s*).

Appointment for purpose of committing breach of trust.

Where new trustees had procured themselves to be appointed with the object of converting a chapel to the use of the seceding section of a congregation of Particular Baptists, they were removed (*t*).

Extinct corporation.

Where a corporation had become extinct, the question was raised whether it could be treated as the case of a trustee who could not be found under the Trustee Act, 1850; or whether, if not, an order for the appointment of new trustees could be made under Romilly's Act. It was ultimately arranged that the order to vest the estates in the new trustees should be taken with the assent of the Crown (*u*).

Power capable of being exercised.

It appears that the Court has jurisdiction to appoint new trustees, even where there is in existence a power of appointment, and there are persons capable of executing it (*x*); but in general it is improper in such a case to make an application to the Court, unless it is rendered necessary by reason of misconduct, or refusal to exercise the power.

Deed declaring trust not enrolled.

The Court has appointed new trustees, although the deed originally declaring the charitable use was not enrolled under 9 Geo. II. c. 36, where the trustees in whom the legal estate was vested admitted the trust, and did not object that the deed was void under the statute, but submitted to act under the direction of the Court (*y*).

Heirs of founder in whom patronage and administration of charity vested.

Where the founder of a charity has vested the administration or patronage thereof in a person and his heirs, the Court will not appoint new trustees so long as there are any heirs, or, where the patronage is capable of alienation, where there are alienees thereof (*z*).

Strict proof of heirship not required.

And in proving the heirship in such cases, the Court does not require the same strict proof as it would in a case where funds in Court required to be distributed; and the Court endeavours to diminish the expense of the inquiry as much as possible (*a*).

(*r*) *Ex parte Greenhouse*, 1 Madd. 92.

(*s*) *Att.-Gen. v. Caius Coll.*, 2 Keen, 150; see also *post*, p. 301.

(*t*) *Newsome v. Flowers*, 30 Beav. 461.

(*u*) *Re Conyers' School*, 10 Hare, App. v.

(*x*) *Att.-Gen. v. Clack*, 1 Beav. 467.

Cf. the practice of the Charity Commissioners, note (*k*) to sect. 2 of the Charit. Trusts Act, 1860, *post*.

(*y*) *Att.-Gen. v. Ward*, 6 Hare, 477.

(*z*) *Att.-Gen. v. Boucherett*, 25 Beav. 116, 119, 120. See also *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. at pp. 80, 81; *Att.-Gen. v. Gaunt*, 3 Swanst. 148, n.

(*a*) *Att.-Gen. v. Boucherett*, *supra*, at p. 121.

Where, pending an information for the appointment of new trustees in the place of some who were dead, the surviving trustees of their own authority appointed others, it was held that, although that act was not a contempt, and was not altogether void, it nevertheless imposed on the trustees the necessity of proving at their own expense that the appointment was proper; and that, if they failed to do so, the appointment ought to be set aside, and the additional cost arising from it paid by them (*b*).

Appointment
by surviving
trustees
pending
information.

Formerly, trustees of a charity were never appointed without a reference, even though the fund was small (*c*).

Where there has been a reference for the appointment of trustees, the Court appoints the persons recommended, unless they are objectionable; and it will not enter into questions as to the fitness of other persons who have not been appointed (*d*).

Applications to the Court for the appointment of new trustees, unless made in a suit or matter actually pending, require the sanction of the Charity Commissioners (*e*).

Consent of
Charity Com-
missioners.

The power of the Courts to appoint new trustees is, as regards endowed schools and educational endowments and parochial charities in the City of London, temporarily restricted by the Endowed Schools Acts (*f*) and the City of London Parochial Charities Act, 1883 (*g*), during the continuance of the powers by those Acts respectively conferred upon the Charity Commissioners.

Temporary
restrictions as
to endowed
schools and
City of Lon-
don charities.

Appointment and Removal by Charity Commissioners.

Under the Charitable Trusts Acts (*h*) the Board of Charity Commissioners have the same power as a judge at chambers or a County Court to make orders for the appointment or removal of trustees of charities, or for or relating to the assurance, transfer, payment, or vesting of any real or personal estate belonging to a charity. The Board must notify their intention of exercising this jurisdiction to the trustees of the charity (*i*), except such as have been party or privy to the application to them (*k*); and they can-

Appointment
and removal
by Charity
Commis-
sioners.

(*b*) *Att.-Gen. v. Clack*, 1 Beav. 467.

(*c*) *Att.-Gen. v. Earl of Arran*, 1 J. & W. 229; *Re Shrewsbury School*, 1 Mac. & G. 85. Upon proper evidence of fitness and acceptance of the trusts in writing, the Court will now nominate new trustees in the order: Set. 4th ed., p. 501.

(*d*) *Re Norwich Charities*, 2 My. & C. 275.

(*e*) Charit. Trusts Act, 1853, s. 17, and notes thereto, *post*; *Re Duncan*, L. R. 2 Ch. 356. As to what is a suit

or matter actually pending, see n. (*a*) to the same section: *Re Jarvis' Charity*, 1 Dr. & Sm. 97; *Re Bingley Free School*, 2 Dr. 283; *Re Ford's Charity*, 3 *ibid.* 324.

(*f*) End. Schools Act, 1874, s. 6, *post*.

(*g*) Sect. 40, *post*.

(*h*) Charit. Trusts Act, 1860, s. 2, and notes thereto, *post*. See *Re Burnham National Schools*, L. R. 17 Eq. 241.

(*i*) Sect. 3, *post*.

(*k*) Charit. Trusts Act, 1860, s. 4, *post*.

not exercise jurisdiction in the case of charities of which the gross annual income exceeds 50*l.*, except upon the application of the trustees or administrators of the charity, or a majority of them (*m*).

Places of
worship.

The powers of the Charity Commissioners with regard to the appointment and removal of trustees extend to appointing and removing trustees of places of religious worship (*n*).

Corporations.

They apply, also, to charities vested in corporations, who either solely or jointly with others are the recipients of the benefits of the charity (*o*).

Trustees
generally ap-
pointed by
Commis-
sioners.
Stamp.

Trustees of charities are now appointed and removed almost exclusively by orders of the Charity Commissioners (*p*).

An order of the Charity Commissioners appointing new trustees and vesting the trust estates in them is, under sect. 8 of the Stamp Act, 1870 (*q*), chargeable with duty in respect both of the appointment and of the vesting order, and does not come within the proviso to sect. 78, as a conveyance or transfer made for effectuating the appointment of a new trustee (*r*).

Official
Trustee of
Charity
Lands.

Where charity land is vested in persons other than those administering the rents, or where there are no trustees, or the trustees are unwilling to act, or it is uncertain in whom the estate is vested, or all or some of the persons in whom it is vested cannot be found, or are under age, or of unsound mind, or otherwise incapable of acting, or are out of the jurisdiction, or where a valid appointment of new trustees cannot be made, or the expense would be excessive, then any Court having jurisdiction, or a judge at chambers, may vest the same in the Official Trustee of Charity Lands. But if the estate is vested in a corporation, the consent of the corporation is required; and in the case of copyholds the consent of the lord of the manor (*s*). The land may be afterwards re-vested in the charity trustees (*t*). These orders may also be made by the Charity Commissioners (*u*).

Official Trusts- In like manner stock or securities (*x*), or money (*y*) held in trust

(*m*) Charit. Trusts Act, 1860, s. 4, and notes thereto, *post*. See also with regard to procedure, appeals, &c., sects. 5—9 of the same Act, *post*; and with regard to the practice of the Charity Commissioners, see notes to sect. 2 of the Act, *post*.

(*n*) Charit. Trusts Act, 1869, s. 15, *post*.

(*o*) Charit. Trusts Act, 1860, s. 10, *post*. See also Charit. Trusts Amend. Act, 1855, s. 48, *post*.

(*p*) See Introd. to Part III. of this Book, *post*.

(*q*) 33 & 34 Vict. c. 97.

(*r*) *Hadgett v. Commissioners of Inland*

Revenue, 3 Ex. D. 46.

(*s*) Charit. Trusts Act, 1853, s. 48, and notes thereto, *post*. See also sects. 47 and 50 of the same Act, *post*; and sects. 15 and 37 of the Charit. Trusts Amend. Act, 1855, *post*.

(*t*) *Ibid.* s. 49.

(*u*) Charit. Trusts Act, 1860, s. 2, *post*.

(*x*) Charit. Trusts Act, 1853, s. 51, and notes thereto, *post*.

(*y*) Charit. Trusts Amend. Act, 1855, ss. 12, 25, and 27, *post*; Charit. Trusts Act, 1860, s. 12; Charit. Trusts Act, 1867, s. 4, sub-s. 2, *post*.

for charities, may be directed by a Court or judge to be transferred to or deposited with or paid to the Official Trustees of Charitable Funds (z). These orders may also be made by the Charity Commissioners (a).

Schemes under the City of London Parochial Charities Act, 1883 (b), must provide for the vesting of the charity property in the Official Trustee of Charity Lands and the Official Trustees of Charitable Funds respectively (c).

Schemes relating to charity property in the parishes mentioned in the first schedule to the Act may provide for the union of existing governing bodies or the creation of new ones (d).

Schemes relating to general charity property in parishes mentioned in the second schedule to the Act may provide for the retention or modification of existing bodies of trustees, and the management of the charity property by them (e).

Except where provision is made for the management of such last-mentioned property by an existing body of trustees, it is to be managed by the new governing body constituted by the Act (f). Special bodies of trustees may also be created for particular areas or particular charitable purposes (g).

The new governing body constituted by the Act is called "The Trustees of the London Parochial Charities," and is a body corporate with perpetual succession and a common seal; its duties are to administer property by the Act directed to be placed, by schemes framed by the Charity Commissioners, under its administration and management (h).

It frequently happens that the bishop of a diocese is a trustee of real or personal estate for charitable or other public purposes, or is invested with powers in relation to charities and public trusts within his diocese. In order to obviate the inconveniences arising in consequence of alterations having taken place in the limits of dioceses, the Charity Commissioners have been empowered (i), in all cases in which the bishop of a diocese is trustee of or invested with any power in relation to any charitable foundation or other trust for public purposes within a place which, at the time when such bishop or his predecessor was first invested with

tees of Charitable Funds.

City of London Parochial Charities Act, 1883.

Bishop of one diocese may be substituted for bishop of another.

(z) Charit. Trusts Amend. Act, 1855, s. 18; Charit. Trusts Act, 1887, s. 4, sub-s. 1.

(a) Charit. Trusts Act, 1860, s. 2, *post*.

(b) *Post*.

(c) Sect. 12, *post*.

(d) Sect. 16.

(e) Sect. 18.

(f) Sect. 14.

(g) Sect. 17.

(h) Sect. 43.

(i) 21 & 22 Vict. c. 71, s. 1; *post*, Part III. of this Book.

such trust or power, was within his diocese, and by reason of an alteration of the limits of the diocese such place is transferred to some other diocese, to make an order substituting for the first-mentioned bishop the bishop of the diocese in which such place is included. The order vests in such lastly-mentioned bishop all estate, property, rights, patronage, and authority in relation to the charity or trust.

Exemptions. The Act does not affect trusts of a visitatorial or other nature exercised in or over any college, hall, or school within the precincts or under the jurisdiction or government of either of the Universities of Oxford or Cambridge, or the colleges of Eton, Winchester, and Westminster (*k*), or to endowments of an eleemosynary or other character, whose foundation trusts are governed by a specific Act of Parliament (*l*).

Incorporation of charity trustees. By the Charitable Trustees Incorporation Act, 1872 (*m*), the Charity Commissioners may, upon the application of the trustees of any charity for religious, educational, literary, scientific, or public charitable purposes, grant a certificate of registration of the trustees as a corporate body, subject to such conditions or directions as they think fit as to the qualification and number of the trustees, the tenure or avoidance of office, and the mode of appointing new trustees, and the custody and use of the common seal (*n*). The certificate vests in the corporation all real and personal estate held in trust for the charity, except stocks, funds, and securities vested in the Official Trustees of Charitable Funds (*o*). After the incorporation vacancies in the number of the trustees are filled up in the same manner (*p*), and the trustees are under the same responsibility (*q*), as if no incorporation had taken place.

Selection of Trustees.

Directions of instrument of foundation must be observed. Where the instrument regulating the charity contains directions as to the appointment of new trustees those directions must, in the case of an appointment under the power in the instrument, be observed (*r*).

Selection by Court. The Court in selecting trustees inquires whether the parties proposed are proper persons, not whether they are the most proper that could be found (*s*).

(*k*) Sect. 4.

(*l*) Sect. 5.

(*m*) 35 & 36 Vict. c. 24, *post*.

(*n*) Sect. 1.

(*o*) Sect. 2.

(*p*) Sect. 4.

(*q*) Sect. 5.

(*r*) Cf. *Att.-Gen. v. Pearson*, 3 Mer. at pp. 402, 403, and *post*, p. 213.

(*s*) *Re Lancaster Charities*, 7 Jur. N. S.

Sometimes trustees are by the instrument of foundation required to possess a certain qualification, as, for instance, to be inhabitants of a particular place. In such a case, if eligible persons satisfying the condition can be found, it is improper to appoint persons who do not satisfy it (*u*). But in a proper case the area from which new trustees are to be chosen may be enlarged (*x*).

Residential qualification.

Where residence within a parish is a necessary qualification, subsequent removal of the trustees to such a distance as to make it impossible for them to attend to their duties will vacate the office (*y*).

Subsequent removal.

But as a rule residence at a short distance from the town where the charitable institution is situated is not a valid objection to proposed new trustees (*z*).

Residence at short distance not usually objection.

Jessel, M. R., said, "The usual course in modern times in the Court of Chancery, or the Chancery Division, is to put the management of charity estates into a body of trustees who are gentlemen from the neighbourhood. That is the usual course, and it has been considered and found in practice to be the best course, and the best way of managing the estates" (*a*).

Management of charity estates usually intrusted to body of trustees in neighbourhood.

In one case the radius from within which trustees of a local hospital were to be selected was fixed at six miles (*b*).

Relationship among proposed new trustees is not a valid objection to them (*c*). And a temporary absence from the United Kingdom is not sufficient to vacate the office (*d*).

Relationship. Absence.

Where a scheme provided that no person should act as trustee of a charity who should occupy any part of the charity property, it was held that a trustee who was the lessee of a small piece of charity land must either give up the lease or the trusteeship (*e*).

Occupation of charity land.

In *Re Burnham National Schools* (*f*), it was considered to be not improper that two of three new trustees should be partisans of parties holding opposing views and the third an indifferent person.

Partisan trustees.

Where trustees were being appointed in place of a municipal corporation, the mere existence of a suspicion that the old trustees

Suspicion against trustees.

96. As to the principles upon which the Court acts in appointing new trustees, see Lewin on Trusts, 8th ed. p. 850; and *Re Tempest*, L. R. 1 Ch. 485.

(*u*) *Att.-Gen. v. Cowper*, 1 Bro. C. C. 439; *Att.-Gen. v. France*, cited *ibid.*; *Att.-Gen. v. Earl of Stamford*, 1 Ph. 737, 748.

(*x*) *Re Sekford's Charity*, 4 L. T. N. S. 321.

(*y*) *Att.-Gen. v. Clifton*, 32 Beav. 596.

(*z*) *Re Lancaster Charities*, 7 Jur. N. S. 96.

(*a*) *Att.-Gen. v. Moises*, 17 May, 1879. A statement of this case will be found in App. III. to this Book.

(*b*) *Re Sekford's Charity*, *supra*.

(*c*) *Re Lancaster Charities*, *supra*. Cf. the practice of the Charity Commissioners, n. (*h*) to sect. 2 of the Charit. Trusts Act, 1860, *post*.

(*d*) *Re Moravian Society*, 4 Jur. N. S. 703.

(*e*) *Foord v. Baker*, 27 Beav. 193.

(*f*) L. R. 17 Eq. at p. 250.

Religious
qualification.
Church of
England
school.

had exercised their trust for political purposes, was held a sufficient ground for not re-appointing any of them (*g*).

In the case of a school founded in connection with the Church of England it is improper to appoint as trustees or governors persons not members of the Church of England (*h*).

But if the trustees appointed are members of the Church of England it is no objection to their appointment that they may afterwards, under the Elementary Education Act, 1870 (*i*), transfer the school to a school board (*k*).

"Whenever the Court of Chancery is called on to appoint trustees of a charity, its duty obviously is to select those who are likely best to discharge the duties imposed on them by the trust; and where the trust is confined to the duty of selecting proper persons to teach or expound the doctrines of the Church of England, or to instruct children in any branches of learning of which the tenets and doctrine of the Church of England are necessarily to form part, and to apply funds for the promotion of that object, it can hardly be doubted that, in the exercise of a sound discretion, the Court will take care that none but members of the Church of England shall be appointed trustees. They will, *prima facie*, be the persons best qualified to judge of the fitness of those who are to be called on to give the necessary instruction" (*l*).

Charities of
other denomi-
nations.

Similarly, trustees or governors of charities for the inculcation of the religious tenets of other denominations, or the benefits of which are intended to be confined to persons holding particular religious views, should be persons professing the particular doctrines required (*m*).

And so far as may be necessary for appointing new trustees, the Court looks at the usage, for the purpose of determining for what religious denomination the charity was founded (*n*).

Repair of
church.

In *Re Donington Church Estate* (*o*), it was held that the proper persons to be appointed trustees of a charity for the repair of the fabric of the parish church were the rector and churchwardens; and an order of the County Court, by which the overseers of the poor,

(*g*) *Re Norwich Charities*, 2 My. & C. 275.

(*h*) *Baker v. Lee*, 8 H. L. C. 495; *Re Stafford Charities*, 25 Beav. 28; *Att.-Gen. v. Clifton*, 32 Beav. 596; and see *Re Burnham National Schools*, L. R. 17 Eq. 241, 247. To a great extent these cases are superseded by the End. Schools Acts, *post*. See also *Re Hodgson School*, 3 App. Cas. at p. 866.

(*i*) 33 & 34 Vict. c. 75.

(*k*) *Re Burnham National Schools*, *supra*. See also *National Society v. School*

Board of London, L. R. 18 Eq. 608.

(*l*) Per Lord Cranworth in *Baker v. Lee*, 8 H. L. C. at p. 513.

(*m*) *Re Drogheda Charity Estates*, 3 J. & Lat. 422; *Att.-Gen. v. Bishop of Limerick*, 5 Ir. R. Eq. 403, with regard to overseers of a charity; *Att.-Gen. v. Pearson*, 3 Mer. 353; *Shore v. Wilson*, 9 Cl. & F. 355; *Att.-Gen. v. St. John's Hospital, Bath*, 2 Ch. D. at pp. 665, 666.

(*n*) *Ibid*. See also *ante*, p. 119.

(*o*) 6 Jur. N. S. 290; *Re Scarborough Charity*, 1 Jur. 36.

the surveyor of highways, and a certain landowner were appointed trustees jointly with the rector and churchwardens, was reversed. So, also, in all cases where the charity is for church purposes (*p*).

But if the primary object of the charity is eleemosynary, no religious qualification is required in the trustees (*q*). Eleemosynary charity.

By sect. 46 of the Charitable Trusts Act, 1853 (*r*), it is provided that nothing in that Act shall detract from any privilege subsisting by any rule or practice of the Court, or by construction of law, for the preference or exclusive or special benefit of the Church of England or the members thereof in the appointment or removal of trustees. Charit. Trusts Act, 1853.

That which would be a sufficient ground for not appointing a trustee is not necessarily a ground for removing him after he has been appointed (*s*). Reason for not appointing trustee not sufficient ground for removing him.

Trustees are not removed merely because there was an irregularity in their appointment; still less if for many years the validity of the appointment has never been questioned (*t*). Not removed because irregularly appointed.

In a suit for the establishment of a scheme the Court declined to enter into the question of the validity of the appointment of or to remove existing officers of the charity, there being no imputation against them personally (*u*). Existing officers not removed.

Again, where the statutes of a grammar school provided that the trustees should possess a certain residential qualification, and for upwards of a century that provision had been neglected, the Court refused to remove trustees against whom no other complaint was made, except that they did not possess the qualification (*v*). Custom not to require residential qualification.

So, although the trustees of a Church of England school ought to be members of the Church of England (*x*), it does not follow that where persons have been elected not possessing that qualification they will be removed (*y*). Religious qualification.

In *Att.-Gen. v. Clifton* (*z*), Romilly, M. R., refused to remove a trustee of a Church of England school who was a Dissenter.

(*p*) *Re Norwich Charities*, 2 My. & C. at p. 305.

(*q*) *Att.-Gen. v. St. John's Hospital, Bath*, 2 Ch. D. 554; and see *Baker v. Lee*, 8 H. L. C. at p. 513; *Re Norwich Charities*, 2 My. & C. 275; *Att.-Gen. v. Calvert*, 23 Beav. 248.

(*r*) *Post*.

(*s*) *Att.-Gen. v. Clapham*, 10 Hare, at p. 613.

(*t*) *Att.-Gen. v. Cuming*, 2 Y. & C. C. at pp. 150, 151.

(*u*) *Att.-Gen. v. Daugars*, 33 Beav. 621. A particular officer may also form so integral a portion of the charitable foundation that he cannot be removed

by the scheme: *Re Browne's Hospital, Stamford*, 60 L. T. N. S. 288; see also *post*, p. 221.

(*v*) *Att.-Gen. v. Earl of Stamford*, 1 Ph. at pp. 747, 748. See *Att.-Gen. v. Clarendon*, 17 Ves. 491; *Att.-Gen. v. Clifton*, 32 Beav. at p. 601; and cf. *Att.-Gen. v. Hartley*, 2 J. & W. 353; *Re Storie's University Gift*, 2 De G. F. & J. 529; and *post*, p. 314.

(*x*) *Supra*.

(*y*) See *Baker v. Lee*, 8 H. L. C. at p. 513, per Lord Cranworth.

(*z*) 32 Beav. at p. 601. See also *Att.-Gen. v. Bishop of Limerick*, 5 Ir. R. Eq. 403, where an overseer of a charity was

Dissenting chapel.

Similarly, in the case of a Dissenting meeting-house, a trustee will not be removed merely because he has joined another congregation (a).

Charit. Trusts Act, 1860.

The Charitable Trusts Act, 1860 (b), provides that the Charity Commissioners shall not make an order removing a trustee on the ground only of his religious belief.

Trustees out of sympathy with congregation.

In *Att.-Gen. v. Hardy* (c), Lord Cranworth seemed to think that trustees of a Dissenting chapel might be removed, because, although they had not misconducted themselves, they had shown themselves to be out of sympathy with the body for whom they were trustees. In a subsequent case, however, his Lordship withdrew that opinion (d).

Provision for future observance of founder's directions.

The case is different where the Court is called upon to prescribe the course to be adopted for the future. It will then give directions for securing the proper observance of the provisions of the instrument of foundation, notwithstanding long usage to the contrary (e).

Where the instrument of foundation of a charity founded in 1695 provided that the trustees should be the lord provost and town council of Edinburgh, and the ministers of the burgh present and to come, and ever since 1700 the lord provost and town council had alone had control of the charity funds, it was held that, notwithstanding the length of time during which a contrary practice had prevailed, the ministers must be joined as joint administrators of the charity (f).

Breach of trust.

It need scarcely be said that these rules do not apply where the trustees have committed breaches of trust; as where the trustees of a Dissenting meeting-house not only entertain religious opinions differing from those which they ought to entertain, but have converted the chapel to the use of a sect for which it was not intended (g). In all cases trustees committing a wilful breach of trust are properly removed.

Costs.

Where such trustees have, by refusing to retire voluntarily, rendered an action for their removal necessary, they will be fixed with the costs (h).

Express provision for

Where by the express stipulation of the deed of trust of a chapel

not removed because he did not possess the proper religious qualification.

(a) *Att.-Gen. v. Clapham*, 10 Hare, at pp. 612, 613.

(b) Sect. 4, *post*.

(c) 1 Sim. N. S. at p. 357.

(d) *Att.-Gen. v. Clapham*, 4 De G. M. & G. at p. 632.

(e) *Att.-Gen. v. Earl of Stamford*, 1

Ph. 737.

(f) *Lord Provost, &c. of Edinburgh v. Lord Advocate*, 4 App. Cas. 823.

(g) *Att.-Gen. v. Pearson*, 7 Sim. 290, 309; *Att.-Gen. v. Shore*, *ibid.* 309, 317, n.; *S. C.* on appeal, *nom. Shore v. Wilson*, 9 Cl. & F. 355.

(h) *Att.-Gen. v. Murdoch*, 2 K. & J. 571.

the trustees can be expelled in certain events, such as their ceasing to belong to the same religious community, the power of expulsion may, on the happening of such events, be effectually exercised (*i*). removal of trustees.

Number of Trustees.

The Court has jurisdiction in an action, and also on petition and at chambers, to appoint additional trustees (*k*) or governors (*l*) of a charity. And the Charity Commissioners possess the like power (*m*). Additional trustees.

The Court will not fill up the number of trustees originally appointed if it does not consider it necessary to do so (*n*). Full number not filled up.

But there is no definite rule as to what number of vacancies will warrant an application for the appointment of new trustees (*o*). Number of vacancies justifying application.

Where only two of a body of thirteen trustees had died, the Court refused to appoint new trustees at the expense of the charity (*p*). Otherwise when the number had been reduced by one-third and one-fourth (*q*).

There is no definite rule as to the number of governors of a charity which a scheme will provide for, but a less number than six would seldom be allowed. Where a scheme provided for three governors, the Court sanctioned an alteration increasing their number (*r*). Number of governors provided by scheme.

In the case of a Dissenting chapel the Court will, notwithstanding that a majority of the trustees may be able to act in the trusts (*s*), fill up the full number of the original trustees (*t*). Dissenting chapels.

In *Davis v. Jenkins* (*u*), where a Dissenting chapel had been conveyed to five persons, their heirs and successors, upon certain trusts, but there was no provision for the appointment of new trustees, Lord Eldon said (*x*): "It is clear the persons in whom the legal estate was vested were meant to be trustees; that there was to be a succession of trustees: it was also probably intended that they were to be a body, who were to exercise a judgment, giving their approbation to the nomination of a minister; and it could not be *Davis v. Jenkins.*

(i) *Att.-Gen. v. Pearson*, 3 Mer. at pp. 412—415.

(k) *Re Burnham National Schools*, L. R. 17 Eq. at p. 246.

(l) *Re Browne's Hospital, Stamford*, 60 L. T. N. S. 288.

(m) *Re Burnham National Schools*, *supra*.

(n) *Re Worcester Charities*, 2 Ph. 284; *Re Shrewsbury Charities*, 1 Mao. & G. 84; and see *Re Shrewsbury School*, *ibid.* 85; *Re Hereford Charities*, 6 Jur. 289, both cases under the Municipal Corporations Act, 5 & 6 Will. IV. c. 76. See *post*, pp. 196 *et seq.*

(o) *Re Gloucester Charities*, 10 Hare, App. iii.

(p) *Re Marlborough School*, 13 L. J. Ch. 2.

(q) *Re Hereford Charities*, 6 Jur. 289.

(r) *Re Browne's Hospital, Stamford*, 60 L. T. N. S. 288. See *Re Conyers' School*, 10 Hare, App. v.

(s) *Re Coates to Parsons*, 34 Ch. D. at pp. 377, 378; and see *post*, p. 214.

(t) *Davis v. Jenkins*, 3 V. & B. 151; *Att.-Gen. v. Lawson*, W. N. 1866, 343.

(u) *Supra*.

(x) At pp. 158, 159; see also p. 154.

the intention of the original founders that the casual heir of whoever happened to be the survivor of them should regulate the whole discretion that was to place in the pulpit the person who should teach this congregation their religious duties. Here is, therefore, upon the instrument itself, enough to induce the Court to say, as matter of trust, it would keep up the number of trustees."

Advowson.

So, also, in the case of trusts of an advowson, where the appointment of the clerk rests with the trustees, it is important that vacancies among the trustees should be filled up with proper persons (a).

Directions as to future appointments.

In settling schemes, provision may be made for the future appointment of trustees in chambers, notice being given to the Attorney-General (b).

In one case a scheme provided for the appointment of twelve trustees, and that application for the appointment of new ones should be made when the number was reduced to five (c).

So, also, on an application for the appointment of new trustees, directions may be given with regard to future appointments. Thus, in one case the Court appointed ten new trustees, and directed that when the number became reduced to five application for the appointment of new trustees should be made at chambers, notice being given to the Attorney-General (d).

Subsequent applications need not be made to same judge.

Subsequent applications for the appointment of new trustees need not be made to the same judge (e).

Trustees may be authorized to fill up vacancies.

The Court will, in charity cases, departing from its ordinary rule (f), when appointing new trustees, and directing trust property to be conveyed to them, direct the insertion in the conveyance of a power to the trustees to appoint new trustees as occasion requires (g).

Municipal Charities.

Appointment of trustees in place of municipal corporations.

It has been the policy of the legislature to divest municipal corporations of estates held by them upon special charitable trusts, and to provide other trustees in their place.

(a) *Att.-Gen. v. Bishop of Litchfield*, 5 Ves. 825; and see *Att.-Gen. v. Scott*, 1 Ves. Sen. at p. 419; *Att.-Gen. v. Newcombe*, 14 Ves. at p. 12, and *post*, p. 210.

(b) *Re Conyers' School*, 10 Hare, App. v.; *Re Townlands of East Bergholt*, 2 Eq. R. 90; *Att.-Gen. v. Hurst*, Set. 4th ed. pp. 585, 586. For forms of order, see *ibid.* p. 550.

(c) *Re Conyers' School*, *supra*.

(d) *Re Townlands of East Bergholt*, *supra*.

(e) *Re Watt's Charities*, 30 Beav. 404.

(f) See Lewin on Trusts, 8th ed. p. 849.

(g) *Re 52 Geo. III. c. 101*, 12 Sim. 262; *Re Lovett's Exhibition*, *Sidney Sussex Coll., Camb.*, Knight-Bruce, V.-C., 20 Dec., 1849. See *Re Puckering's Charity*, Set. 4th ed. p. 565, where the Court authorized the trustees themselves to fill up vacancies as formerly. With regard to the practice of the Charity Commissioners in this respect, see notes to sect. 2 of Charit. Trusts Act, 1860, *post*.

The first attempt in this direction was made by the Municipal Corporations Act, 1835 (h).

Municipal
Corporations
Act, 1835.

Sect. 71.

Sect. 71 of that Act, after reciting that divers bodies corporate then stood seised or possessed of sundry hereditaments and personal estate in trust, in the whole or in part, for certain charitable trusts, and that it was expedient that the administration thereof should be kept distinct from that of the public stock and borough fund, provided that on the 1st of August, 1836, all the estate, right, interest, and title, and all the powers of any municipal corporation to which the Act applied in respect of hereditaments and personal estate held on charitable trusts, should determine: provided that if any vacancy should be occasioned among the charitable trustees for any borough before the 1st of August, 1836, the Lord Chancellor might upon petition appoint another trustee to supply the vacancy (i); every person so appointed to remain trustee until the time at which the person in whose room he was chosen would have ceased to be trustee; and provided also that the Lord Chancellor should make such orders as he should see fit for the administration, subject to such charitable trusts as aforesaid, of such trust estates (k).

Upon this section it was held that the legal estate remained in the corporation, and merely the equitable interest, or rather the

Legal estate
left in corpo-
ration.

(h) 5 & 6 Will. IV. c. 76, repealed by the Municipal Corporations Act, 1882. See *Att.-Gen. v. Mayor of Exeter*, 2 De G. M. & G. at p. 516.

(i) See *Bignold v. Springfield*, 7 Cl. & F. 71.

(k) This section is as follows:—"In every borough in which the body corporate, or any one or more of the members of such body corporate, in his or their corporate capacity, now stands or stand solely, or together with any person or persons elected solely by such body corporate, or solely by any particular number, class, or description of members of such body corporate, seised or possessed, for any estate or interest whatsoever, of any hereditaments, or any sums of money, chattels, securities for money, or any other personal estate whatsoever, in whole or in part in trust or for the benefit of any charitable uses or trusts whatsoever, all the estate, right, interest, and title, and all the powers of such body corporate, or of such member or members of such body corporate, in respect of the said uses and trusts, shall continue in the persons who at the time of the passing of this Act are such trustees as aforesaid, notwithstanding that they may have ceased to hold any

office by virtue of which before the passing of this Act they were such trustees, until the first day of August, 1836, or until Parliament shall otherwise order, and shall immediately thereupon utterly cease and determine: Provided always, that if any vacancy shall be occasioned among the charitable trustees for any borough before the said first day of August, it shall be lawful for the Lord High Chancellor or Lords Commissioners of the Great Seal for the time being, upon petition in a summary way, to appoint another trustee to supply such vacancy; and every person so appointed as trustee as last aforesaid shall be a trustee until the time at which the person in the room of whom he was chosen would regularly have ceased to be a trustee, and he shall then cease to be a trustee: Provided also, that if Parliament shall not otherwise direct, on or before the said first day of August, 1836 (which was not done), the Lord High Chancellor or Lords Commissioners of the Great Seal shall make such orders as he or they shall see fit for the administration, subject to such charitable uses or trusts as aforesaid, of such trust estates."

right of administering the charitable funds, became vested in the trustees appointed under it (*l*).

Remedied by
Charit. Trusts
Act, 1853.

This defect was remedied by the Charitable Trusts Act, 1853, which made provision (*m*) for the vesting of the legal estate in the trustees appointed in the place of a municipal corporation under the Municipal Corporations Act, 1835 (*n*).

Repeal.

Both the Municipal Corporations Act, 1835, and sect. 65 of the Charitable Trusts Act, 1853, were repealed by the Municipal Corporations Act, 1882 (*o*).

Munic. Corp.
Act, 1882.

Sect. 133 of the last-mentioned Act provides that "Where at the passing of the Municipal Corporations Act, 1835, the body corporate of a borough, or any one or more of the members thereof, in his or their corporate capacity, stood solely, or together with any person or persons elected solely by that body corporate, or solely by any particular number, class, or description of members thereof, seised or possessed, for any estate or interest, of land, in whole or in part in trust or for the benefit of any charitable uses or trusts, and the legal estate in that land was, at the passing of the Municipal Corporations Act, 1835, vested in the body corporate or person or persons so seised or possessed thereof, and was by the Charitable Trusts Act, 1853, vested in the trustees appointed by the Lord Chancellor under the Municipal Corporations Act, 1835, or such of them as should be surviving and continuing trustees under that appointment, according to the respective estates and interests therein, and subject to such and the same charges and incumbrances, and on such and the same trusts, as the same were subject to before such vesting, then, in every case, on the death, resignation, or removal of any trustee, and on any appointment of a new trustee, the legal estate in that land, and in all other lands subject to any such charitable uses or trusts, for the time being vested in the trustees or any of them, or in any persons or the heirs or devisees of any person deceased, resigned, or removed, shall vest in the persons who after such death, resignation, or removal, and such appointment of a new trustee, continue or are the trustees for the time being, without any conveyance or assurance."

Cases within
s. 71 of

Sect. 71 of the Municipal Corporations Act, 1835, was held applicable in the case of the right of presentation to a vicarage vested in

(*l*) *Doe v. Norton*, 11 M. & W. 913;
Christ's Hospital v. Grainger, 16 Sim.
83, 102; *Bignold v. Springfield*, 7 Cl. &
F. at p. 117.

(*m*) Sect. 65, *post*.
(*n*) See *Re Huntingdon Municipal Cha-*
rities, 27 Beav. 214.
(*o*) 45 & 46 Vict. c. 50, s. 5.

a municipal corporation for the better maintenance of a free grammar school (*p*). So, also, in the case of a right to appoint a master of a hospital vested in a corporation as auxiliary to the charitable purpose which formed the principal object of the charity (*q*).

Munic. Corp.
Act, 1835.

Where the mayor, recorder, aldermen, and common council of Exeter were by letters patent incorporated and constituted governors of a hospital, but the recorder was not a member of, though elected by, the corporation, the corporation of the hospital was held to be so far identical with the municipal corporation as to be within the spirit, if not the letter, of the section (*r*). So, also, where the corporation had merely the right to nominate the master of a hospital, but no part of the charity estates was vested in it (*s*).

The section was held not to apply where the legal estate of charity lands was vested in trustees and the corporation were the visitors, and had the nomination of the objects of the charity only (*t*); or where a charity estate was vested in trustees, with a direction that when the number was reduced to six the survivors should appoint others, with the consent of the high bailiff and capital burgesses (the then corporation) of a borough, who were always to be of the number so appointed (*u*). Nor did it apply where money had been given to a corporation to be disposed of as they thought fit, and they had appropriated it to the endowment of lectureships (*x*).

Cases not
within
section.

Sect. 2 of the Act (*y*) expressly reserved any share and benefit possessed by the individual freemen in the common lands and public stock of any borough or body corporate, and in lands and personal property held by any person or body corporate upon a charitable trust. This provision applied where the rents and profits of a fishery, tolls, land, and fairs were received by a corporation for the benefit of the freemen of the borough (*z*). But it has been held not to apply to property not held upon a charitable trust at all (*a*).

Reservation
of rights of
freemen.

Where sect. 71 of the Act did not apply, the corporation constituted by the Act were the successors of and had the same liabilities

Where s. 71
did not apply,
reformed cor-

(*p*) *Re Shrewsbury School*, 1 My. & C. 632.

(*q*) *Re St. John's Hospital, Bath*, 3 Mac. & G. 235; *Att.-Gen. v. St. John's Hospital, Bedford*, 10 Jur. N. S. 897.

(*r*) *Att.-Gen. v. Mayor of Exeter*, 2 De G. M. & G. 507.

(*s*) *Re Huntingdon Municipal Charities*, 27 Beav. 214.

(*t*) *Att.-Gen. v. Newbury Corporation*, C. P. Coop. 72; *Christ's Hospital v. Grainger*, 16 Sim. at p. 102. See, however, *Re King's Lynn Charities*, 3 Jur. 402.

(*u*) *Att.-Gen. v. Phillimore*, 9 L. J. Ch. 338.

(*x*) *Re Oxford Charities*, 3 My. & C. 239. See *Re v. Sankey*, 5 A. & E. 423.

(*y*) See also *Municipal Corporations Act*, 1882 (45 & 46 Vict. c. 50), s. 205, *post*.

(*z*) *Prestney v. Mayor of Colchester*, 21 Ch. D. 111; *Stanley v. Mayor of Norwich*, 3 Times L. B. 506.

(*a*) *Att.-Gen. v. Mayor of Stafford*, W. N. 1878, 74.

porations
successors of
old corpora-
tions.

Appointment
of new trus-
tees in cases
within the
section.

Powers of
new trustees.

Members of
corporation
eligible.

Munic. Corp.
Act, 1883.

and powers as regards charity estates as the old corpora-
tion (b).

In cases to which the section applied, the effect of it was to put
an end to the trusteeship of the corporation. It consequently
became necessary to supply the deficiency by appointing new
trustees (c).

The appointment of new trustees was made upon petition (d).

The trustees so appointed have, as such trustees, all the rights and
powers formerly possessed by the corporation (e).

Members of the corporation were held to be eligible as trustees,
although the corporation might formally have set up a claim to
the property in opposition to the charity (f).

With regard to corporations dissolved under the Municipal Cor-
porations Act, 1883 (g), the Charity Commissioners are empowered,
by means of schemes, to vest the property of such corporations
in such persons or body corporate as they think right for the
benefit of the inhabitants (h). And they were empowered to pro-
vide, by the appointment of interim trustees and otherwise, for the
security and proper management and application of such pro-
perty (i).

Nothing in the Act affects the right to the benefit of any charity,
or alters, or confers any power of altering, the defined charitable
purposes (if any) to which any property was by law applicable at
the passing of the Act (k).

Copyholds.

Fine in case
of single
trustee.

On the admission of a trustee of copyholds a fine becomes pay-
able (l), and on the decease of a trustee a heriot becomes due to the
lord (m).

In case of
several
trustees.

Where there are several trustees, inasmuch as they are joint
tenants, a heriot does not become due until the death of the longest

(b) *Att.-Gen. v. Phillimore*, 9 L. J. Ch. 338. See *Prestney v. Mayor of Colchester*, 21 Ch. D. 111.

(c) *Re Shrewsbury School*, 1 My. & C. at p. 648. These appointments are now commonly made by the Charity Commissioners.

(d) *Re St. John's Hospital, Bath*, 3 Mac. & G. 235; *Att.-Gen. v. Mayor of Exeter*, 2 De G. M. & G. 507; *Re Huntingdon Municipal Charities*, 27 Beav. 214. It was held that the jurisdiction conferred by the section was not limited to the Lord Chancellor, but might be exercised by a vice-chancellor: *Re Northampton Charities*, 3 De G. M. & G. 179; *Re Gloucester Charities*, 10 Hare, App. iii. Cf. *Re Robinson's Charity*, 3 De G. M. &

G. 188.

(e) *Att.-Gen. v. Corporation of Ludlow*, 2 Ph. 685.

(f) *Re Ludlow Charities*, 3 My. & C. 282.

(g) See sect 3 of the Act, and notes thereto, *post*, Part III. of this Book. The municipal corporations to which this Act applies are corporations which were not included in the previous Municipal Corporations Acts.

(h) Sect. 3, sub-sect. (b).

(i) Sect. 8, sub-sect. (1).

(k) Sect. 4, sub-sect. (2).

(l) *Earl of Bath v. Abney*, 1 Burr. 206; *Reg. v. Wellesley*, 2 E. & B. 924.

(m) *Trinity College v. Broune*, 1 Vern. 441; *Car v. Ellison*, 3 Atk. at p. 77.

liver of them, for joint tenants are seised *per mie et per tout*; and however many there are, they all make but one tenant to the lord. The tenancy, therefore, is not brought to an end by the death of one of them; and, consequently, no heriot can be due while any trustees remain to fill the tenancy (*n*).

Where several trustees are admitted (there being no special custom as to fines on such admittance) the proper mode of estimating the fine is to take for the first life the sum customarily paid on the admittance of a single tenant; for the second life, half the sum taken for the first; for the third, half the sum taken for the second; for the fourth, half that which is taken for the third, and so on. The effect of this is, that the lord never receives quite double the sum taken upon the first life (*o*).

Mode of calculating fine.

Although some of the old trustees are surrenderees as well as surrenderors, the fine is payable in respect of all the surrenderees, for the survivors of the old trustees as well as the new trustees take a new estate (*p*).

Payable in respect of continuing as well as new trustees.

No order vesting copyhold lands in the Official Trustee of Charity Lands can take effect without the consent of the lord of the manor; and the Court, or judge having jurisdiction to make such order, may direct such periodical or other payment as such Court or judge may think fit, to be made to the lord of the manor, in compensation for fines or other profits which would have become due upon death or admittance of tenants (*q*).

Copyholds vested in official trustee.

Where property conveyed to trustees for religious or educational purposes under 13 & 14 Vict. c. 28, and which vests, without conveyance, in the trustees on their appointment in the manner provided by the Act, is of copyhold or customary tenure, it is enacted by that Act that if such property is liable to the payment of any fine, with or without a heriot, on the death or alienation of the tenant or tenants thereof, it shall be lawful for the lord or lady of the manor of which such property shall be holden, on the next appointment of a new trustee or trustees thereof, and at the expiration of every period of forty years thereafter, so long as such property shall belong to or be held in trust for such congregation or society or body of persons, or other party or parties to whom such property may have been or shall be conveyed for their benefit, to receive and take a sum corresponding to the fine and heriot, if any,

13 & 14 Vict. c. 28.

Payment in lieu of fines in case of copyholds vested in trustees for religious or educational purposes.

(*n*) 2 Watkins' Copyh. p. 148.

(*o*) *Wilson v. Hoare*, 2 B. & Ad. 350, 360; 10 A. & E. 236; Scriv. Copyh. 6th ed. pp. 157, 164.

(*p*) *Sheppard v. Woodford*, 5 M. & W. 608; but see *Wilson v. Hoare*, 10 A. &

E. 236.

(*q*) Charit. Trusts Act, 1853, s. 48; Charit. Trusts Amend. Act, 1855, s. 15. These orders may also be made by the Charity Commissioners: Charit. Trusts Act, 1860, s. 2, *post*.

which would have been payable by law upon the death or alienation of the tenant or tenants thereof; and such payments are in full of all fines payable to the lord or lady of the manor of which such property is holden, while the same shall remain the property or be held in trust for such congregation or society or body of persons; and the lord or lady of such manor has powers for the recovery of such sums as such lord or lady could have had in the event of the tenant or tenants of such property having died or having alienated the same (r).

Charitable
Trustees In-
corporation
Act, 1872.

The Charitable Trustees Incorporation Act, 1872 (s), which empowers the Charity Commissioners, on the application of the trustees of any charity, to grant a certificate of registration of such trustees as a body corporate, contains similar provisions for payments in lieu of fines or heriots (t).

(r) Sect. 2.

(s) *Post*, Part III. of this Book.

(t) Sect. 2.

CHAPTER VIII.

APPOINTMENT AND REMOVAL OF MEMBERS OF COLLEGES, MINISTERS,
SCHOOLMASTERS, ETC.

SECTION I.

MEMBERS OF COLLEGES.

IN a former chapter it has been shown that questions as to the election and amotion of members of colleges and hospitals are generally decided by the visitors (*a*), according to the statutes by which such institutions are regulated.

Election and amotion of members of colleges and hospitals.

In some respects, however, these matters are controlled by statute. By 33 Hen. VIII. c. 27, after reciting that by the common law all assents, elections, and grants by the dean, warden, provost, master, president, or other governor of any cathedral, church, hospital, college, or other corporation, by whatsoever name they may be incorporated or founded, with the assent or consent of the greater part of the chapter, fellows, or brethren of such corporation having voices of assent thereto, are as good as if the whole number had thereunto agreed, it is enacted that every peculiar, act, order, rule, and statute theretofore made or thereafter to be made by any founder of any hospital, college, deanery, or other corporation, at and upon the foundation thereof, whereby the grant or election of the governor or ruler of such hospital, college, deanery, or other corporation, with the assent of the more part of such of the same hospital, college, deanery, or corporation, as had or should have voice of assent to the same, at the time of such election thereafter to be made, should be in any wise hindered or let by any one or more, being the lesser number of such corporation, contrary to the common law, should thenceforth be void and of none effect.

33 Hen. VIII. c. 27.

The Act applies only to grants and elections to be made by the whole body of the corporation, not to grants and elections to be

Application of Act.

(*a*) *Ante*, p. 77.

made by a particular number of the members. Accordingly, where a college statute empowered a certain number of the members to dispense with the absence of a fellow, the assent of the majority only of such members to such dispensation was held not sufficient, the case not coming within 33 Hen. VIII. c. 27 (b).

31 Eliz. c. 6. In order to secure the election of the fittest persons, it is enacted by 31 Eliz. c. 6, "that if any person or persons, bodies politic or corporate, which have election, presentation, or nomination, or voice or assent in the choice, election, presentation, or nomination of any fellow, scholar, or other person, to have room or place in any of the said churches, colleges, schools, hospitals, halls, or societies, shall at any time after forty days next after the end of this present session of Parliament, have, receive, or take any money, fee, reward, or any other profit, directly or indirectly, or shall take any promise, agreement, covenant, bond, or other assurance to receive or have any money, fee, reward, or any other profit, directly or indirectly, either to him or themselves or to any other of their or any of their friends, for his or their voice or voices, assent or assents or consents, in electing, choosing, presenting, or nominating any officer, fellow, scholar, or other person to have any room or place in any of the said churches, colleges, halls, schools, hospitals, or societies; that then and from thenceforth the place, room, or office which such person so offending shall then have in any the said churches, colleges, schools, halls, hospitals, or societies, shall be void; and that then, as well the Queen's majesty, her heirs and successors, and every other person and persons, their heirs and successors, to whom the presentation, donation, gift, election, or disposition, shall of right belong or appertain, of any such of the said rooms or places of the said person offending as aforesaid, shall or may at their pleasure, elect, present, nominate, place, or appoint any other person or persons in the room, office, or place of such person or persons so offending, as if the said person or persons so offending then were naturally dead." (c).

A penalty is by the same Act made payable by any fellow, officer, or scholar taking money, reward, or profit for resigning his place, and the person giving or agreeing to give or pay it is rendered incapable for that time or turn (d); and the Act, together with the orders and statutes of the church, college, school, hall, hospital, or society, are to be read, under a penalty in default, publicly at every election (e).

(b) *Case of New College, Oxford*, 2 Dyer, 247 a.

(c) Sect. 1.

(d) Sect. 2.

(e) Sect. 3.

Where by the statutes of a college certain elections were required to be made by the president and the majority of the fellows, it was held that the concurrent voice of the president was necessary in all such elections (*f*); and where the election of fellows was to be "*communi omnium assensu aut saltem ex consensu magistri et majoris partis communitatis*," it was held that no election was valid in which the master did not concur (*g*).

Where concurrence of head of college requisite to election of fellows.

A provision in the statutes that a fellow shall be "*in sacerdotio constitutus*," means that he must be in holy orders, but not necessarily in priest's orders (*h*).

Holy orders.

Where college statutes make the possession of property a disqualification for holding a fellowship, real estate is in general the only property considered (*i*).

Property qualification by fellow or president of college.

And if real property is required as a qualification by the statutes, an interest in land which in equity would be deemed personal estate may satisfy them (*k*).

If possession of property of a certain amount is required as a qualification for the office of president of a college, it is not necessary for a candidate to show his qualification at the election (*l*).

Where the qualification for a living to be granted to a fellow of a college was, that he should not at such time as the church should be void, "be presented, instituted, or inducted, into any other living," it was held that it was complied with by the previous resignation of another living. It was also held that a resignation of a former living, sent by post to the bishop, who indorsed and signed a memorandum of his acceptance, was sufficient, without any public act (*m*).

Qualification for holding college living.

A fellow of a college, regularly elected, received his salary for five years, and then, instead of travelling beyond the seas for five years more, as he was required to do by the will under which the fellowship was created, upon a suggestion of ill-health resigned his fellowship. The trustees accepted the resignation, and it was held that they had dispensed with the condition, and could not compel him to refund the salary which he had received (*n*).

Resignation after receiving salary, but without fulfilling conditions.

(*f*) *Re Queen's Coll., Cambridge*, 5 Russ. 64; but see *Case of Clare Hall*, *ibid.* 73, n.; *Case of Gonville and Caius College*, *ibid.* 76, n.

(*g*) *Case of St. Catherine's Hall*, 5 Russ. 85, n.

(*h*) *Re University Coll., Oxford*, 2 Ph. 521. As to a fellowship being, under college statutes, vacated by the acceptance of a professorship, see *Ex parte Edleston*, 3 De G. M. & G. 742. And as to the

construction of college statutes with regard to examinations for fellowships, see *Watson v. All Souls College, Oxford*, 11 L. T. N. S. 166.

(*i*) *Case of Queen's College, Cambridge*, Jac. at p. 37.

(*k*) *Ibid.* at p. 38.

(*l*) *Ibid.* at p. 36.

(*m*) *Heyes v. Exeter College, Oxford*, 12 Ves. 336.

(*n*) *Att.-Gen. v. Stephens*, 1 Atk. 358.

The case would have been otherwise if when he had offered to resign the fellowship the trustees had refused to accept the resignation unless he complied with the terms of the will or refunded the salary he had received (*q*).

The words "*a collegii emolumentis recedere*," in college statutes, were held to import a forfeiture of the fellowship, and the word "*discedere*" was not to be confined to a vacancy by death (*r*).

Admission of president.

Where, previously to the passing of the Universities Tests Act, 1871 (*s*), the statutes of a college directed that the president on his election should be admitted, and prescribed an oath to be taken by him and ceremonies to be performed, and it appeared that a particular form of admission besides the oath and ceremonies mentioned in the statutes had been used, it was held that the admission consisted in observing the particular form and not in taking the oath and going through the ceremonies, and that the president elect did not forfeit his office by taking the oath and going through those ceremonies without having previously subscribed to the declaration required by the Act of Uniformity (*t*).

Religious qualification. Universities Tests Act, 1871.

The Universities Tests Act, 1871 (*u*), provides that no person in the Universities of Oxford, Cambridge, and Durham, shall be required before taking a degree (other than a degree in divinity), or taking office (except in certain specified cases), to subscribe any article or formulary of faith, or to make any declaration or take any oath respecting his religious belief or profession (*x*).

Confined to colleges then existing.

The Act is confined to colleges subsisting before it was passed, and does not prevent the creation of fresh colleges, the endowments of which are confined to the members of a particular religious community (*y*).

Revision of statutes of Universities of Oxford and Cambridge and their colleges.

The legislature has by various statutes interfered for the purpose of making provision for the amending and remodelling the statutes of the Universities of Oxford and Cambridge, and their respective colleges and halls (*z*). The last Act dealing with this subject is

(*q*) *Att.-Gen. v. Stephens*, 1 Atk. 358.
(*r*) *Re St. Catherine's Hall, Cambridge*, 1 Mac. & G. 473.

(*s*) 34 & 35 Vict. c. 26.

(*t*) *Case of Queen's College, Cambridge*, Jac. 1. The effect of the Act of Uniformity (14 Car. II. c. 4), in the case of a party neglecting to subscribe, was to render his office void, without a judicial sentence. If, therefore, the fellows of a college were by their statutes required to elect a president within a certain time after a vacancy, and the elected president neglected to subscribe the declaration of conformity before his admission, his

office thereby became *ipso facto* void, and a new election must have taken place within the specified time.

(*u*) 34 & 35 Vict. c. 26.

(*x*) *Ibid.* sect. 3.

(*y*) *Reg. v. Hertford College*, 3 Q. B. D. 693, where it was held that the Act did not apply to Hertford College, Oxford.

(*z*) See, as to Oxford, 17 & 18 Vict. c. 81; 19 & 20 Vict. c. 31; and 20 & 21 Vict. c. 25, of which the second has entirely, and the others have as to the greater part thereof, been repealed by the Stat. Law Rev. Act, 1875, and other Acts. As to Cambridge, see 19 &

the Universities of Oxford and Cambridge Act, 1877 (*a*), by which two bodies of commissioners were appointed for a limited period for the purpose of revising the statutes and constituting new ones. The greater part of this Act was repealed by the Statute Law Revision Act, 1883 (*b*), its powers having expired.

The Universities of Oxford and Cambridge Act, 1877 (*c*), expressly provided that nothing therein should repeal the provisions of the Universities Tests Act, 1871 (*d*). But the commissioners were empowered by any statute made by them to declare that an office erected or endowed (other than a headship or fellowship of a college) required in the incumbent thereof the possession of theological learning, and in such case it was provided that the Universities Tests Act, 1871 (*e*), should, with reference to that office, be read and have effect as if the statute had been made before and was in operation at the passing of the Universities Tests Act, 1871 (*f*).

The Universities of Oxford and Cambridge, London and Durham, and their colleges and halls, are exempted from the Charitable Trusts Acts (*g*). Exemption from Charit. Trusts Acts,

They are also exempted from the operation of the Grammar Schools Act (*h*). and Grammar Schools Act.

The rights and privileges, &c. possessed by the Universities of Oxford, Cambridge and Durham, under their respective charters and otherwise, are expressly preserved by the Municipal Corporations Act, 1882 (*i*). Privileges preserved by Munic. Corp. Act, 1882.

SECTION II.

CHAPLAINS AND CURATES.

According to the general ecclesiastical constitution of this country, the right of collation to a living is in general vested in the bishops of the several dioceses, or in the patrons of the particular church (*k*). Livings in gift of bishop or patron.

No order of the Charity Commissioners, under 21 & 22 Vict. c. 71 (*l*), for the substitution of the bishop of one diocese for the bishop of another as trustee of charitable trusts, may be made in Exempted from 21 & 22 Vict. c. 71.

20 Vict. c. 88, the greater part of which has also been repealed by the Stat. Law Rev. Act, 1875, and other Acts.

(*a*) 40 & 41 Vict. c. 48.

(*b*) 46 & 47 Vict. c. 39.

(*c*) 40 & 41 Vict. c. 48.

(*d*) Sect. 57.

(*e*) 34 & 35 Vict. c. 26.

(*f*) Sect. 58. Sect. 59, which made provision for religious instruction and worship in pursuance of the Universities

Tests Act, was repealed by the Stat. Law Rev. Act, 1883.

(*g*) Charit. Trusts Act, 1853, s. 62, and notes thereto, *post*.

(*h*) 3 & 4 Vict. c. 77, s. 24, *post*, App. II.

(*i*) 45 & 46 Vict. c. 50, s. 257.

(*k*) *Att.-Gen. v. Scott*, 1 Ves. Sen. at p. 414.

(*l*) Part III. of this Book, *post*.

relation to any advowson or right of patronage or presentation, part of the possessions of a See, which might be exchanged or otherwise disposed of by scheme of the Ecclesiastical Commissioners, confirmed by her Majesty in Council, or in relation to any ecclesiastical patronage or power of nomination or appointment of any curate, chaplain, or spiritual person, under any trust without the consent of the Ecclesiastical Commissioners under their common seal (*m*).

Living in trust for inhabitants or parishioners.

Meaning of "parishioner" and "inhabitant."

Sometimes a living is vested in trustees in trust for the inhabitants or parishioners of a place, and in that case the trustees must present the nominee of the majority of the electors (*n*).

"Parishioner" was defined by Lord Hardwicke (*o*) to include "not only inhabitants of the parish, but persons who are occupiers of lands, that pay the several rates and duties, though they are not resident nor do contribute to the ornaments of the church."

"Inhabitants," said the same judge (*p*), "is still a larger word, takes in housekeepers, though not rated to the poor, takes in also persons who are not housekeepers; as, for instance, such who have gained a settlement, and by that means become inhabitants."

Electors must satisfy both descriptions.

When the right of election is vested in the "inhabitants and parishioners," the electors must be persons satisfying both descriptions (*q*).

"Chiefest and discreetest."

In *Fearon v. Webb* (*r*) the election was to be made by the inhabitants and parishioners, "or the major part of the chiefest and discreetest of them," and it was held that the persons entitled to vote were confined to those who paid church and poor rate, as distinguished from those who from poverty were supposed not to have a mind of their own, and to those who had attained twenty-one, as distinguished from those who were under the disability of coverture or infancy.

Meaning determined "*secundum subjectam materiam*." Whether confined to ratepayers.

The meaning of inhabitants and parishioners is determined "*secundum subjectam materiam*" (*s*). "The construction is always to be made with reference to the nature of the subject" (*t*).

It was said by Lord Hardwicke that in the absence of anything to the contrary it would not be unreasonable to limit the words

(*m*) Sect. 2.

(*n*) *Fearon v. Webb*, 14 Ves. 13; *Att.-Gen. v. Rutter*, 2 Russ. 101, n.; *Edenborough v. Archbishop of Canterbury*, 2 Russ. 93. See *Att.-Gen. v. Webster*, L. R. 20 Eq. at p. 491; and cf. *Att.-Gen. v. Marquis of Stafford*, 3 Ves. Jun. 77.

(*o*) *Att.-Gen. v. Parker*, 3 Atk. at p. 577. This definition was adopted in *Etherington v. Wilson*, 1 Ch. D. 160.

See further, Note B in App. III. to this Book.

(*p*) *Att.-Gen. v. Parker*, *supra*. See *Att.-Gen. v. Clark*, Amb. 422; *Att.-Gen. v. Forster*, 10 Ves. at p. 339; *Att.-Gen. v. Newcombe*, 14 Ves. 1.

(*q*) *Fearon v. Webb*, 14 Ves. 13.

(*r*) *Ibid*.

(*s*) See *ibid*. at pp. 19, 20.

(*t*) *Att.-Gen. v. Forster*, 10 Ves. at p. 339.

“inhabitants and parishioners” to persons paying scot and lot (*u*). And this view was, in fact, adopted in a subsequent case, where the election was held to be only in parishioners and inhabitants of the parish paying rates and assessments to the church and poor (*x*). But in *Edenborough v. Archbishop of Canterbury* (*y*), Lord Eldon said (*z*), that “where the right of nominating a perpetual curate was given to the parishioners, a part of the parishioners could not, by their vote or declaration, so narrow the right of voting as to exclude those who did not pay church rates from sharing in the election.”

In every case, however, usage is regarded in determining the persons entitled to exercise the right of voting; and usage is often conclusive in determining whether the right of voting is confined to ratepayers or not (*a*). Usage.

If, on the one hand, the usage has been to confine the right of voting to ratepayers, they alone can take part in an election (*b*). If, on the other hand, the usage has been not to confine it in that way, then it cannot be so limited (*c*).

Where the right of election is in the ratepayers, a person who comes into the parish after a rate has been made has no right to vote before another rate has been made, unless the making of the rate has been postponed for an unfair purpose (*d*). Persons coming to parish after rate has been made.

And it seems that Jews, but not Roman Catholics, have a right to vote (*e*). Jews and Roman Catholics.

The right of electing the minister of a parish vested in the “parishioners” was not transferred to the vestry by the Metropolis Local Management Act, 1855 (*f*), or by sect. 3 of 19 & 20 Vict. c. 112 (*g*). Right of election not transferred to vestry.

Formerly, it was held that in elections by parishioners the voting must be by open polling (*h*), but it has been recently laid down that by a resolution of the parish the election may be by ballot (*i*). Voting.

(*u*) *Att.-Gen. v. Parker*, 3 Atk. at p. 577; *Att.-Gen. v. Davy*, cited *ibid*.

(*x*) *Att.-Gen. v. Rutter*, 2 Russ. 101, n. Compulsory church rates were abolished by 31 & 32 Vict. c. 109; and the question would now simply be whether voters must be ratepayers or not.

(*y*) 2 Russ. 93.

(*z*) At p. 104.

(*a*) *Att.-Gen. v. Forster*, 10 Ves. at p. 338.

(*b*) *Att.-Gen. v. Newcombe*, 14 Ves. 1; *Edenborough v. Archbishop of Canterbury*, 2 Russ. 93.

(*c*) *Att.-Gen. v. Parker*, 3 Atk. at p. 577.

(*d*) Per Lord Eldon in *Edenborough*

v. Archbishop of Canterbury, 2 Russ. at p. 110. It was said, in *Att.-Gen. v. Forster*, 10 Ves. at p. 339, that persons paying to the church and poor were to be understood to mean persons liable to pay, not persons who had actually paid.

(*e*) *Edenborough v. Archbishop of Canterbury*, 2 Russ. 111, n.

(*f*) 18 & 19 Vict. c. 120, s. 90.

(*g*) *Carter v. Cropley*, 8 De G. M. & G. 680. See also *Re Hayle's Estate*, 31 Beav. 139; *Att.-Gen. v. Drapers' Co.*, 4 Dr. 299.

(*h*) *Edenborough v. Archbishop of Canterbury*, 2 Russ. at p. 109; and see *Faulkner v. Elger*, 4 B. & C. 449.

(*i*) *Shaw v. Thompson*, 3 Ch. D. 233.

Other matters relating to election.

The parishioners may also determine other matters with regard to the manner in which the election shall take place, such as the hours and times for polling (*k*).

Irregularity.

Irregular or even illegal conduct at a meeting to determine the mode of election will not induce the Court to disturb the election, unless it appear that a voter has been deprived of an opportunity of voting (*l*).

The Court, in declining to interfere, acts upon the principle that the election is substantially fair, and the majority not likely to be disturbed by any change in the manner and form of voting (*m*).

Election by trustees.

Where the right of election is vested in the trustees, an election by a majority of them is valid (*n*).

Presentation.

All the trustees, having the right to present to a living, ought to join in signing the presentation, for if they do not the ordinary cannot be compelled to admit the clerk therein named (*o*).

Proxy.

Although the trustees cannot vote, they may sign the presentation by proxy (*p*).

Minority compellable to present.

Where a valid election has taken place, the majority may compel the dissenting minority to join in the presentation (*q*).

Election good though full number of trustees not kept up.

It follows that an election by the trustees is not invalid because the full number of trustees has not been kept up (*r*).

Sole surviving trustee.

A presentation by a sole surviving trustee has been supported (*s*). And where, by neglect, the number of trustees in a trust to present to a living was not filled up at the time of an avoidance, the Court refused, in the absence of special ground, to stay by injunction the institution of a clerk presented under the legal title of the heir of the surviving trustee (*t*).

Heir of last survivor.

The Court, however, takes care that the number of trustees shall be properly filled up for the future (*u*); and if an appointment is set aside, and a new election consequently rendered necessary, the Court will see that the number of trustees is filled up before the new election takes place (*x*).

(*k*) *Davies v. Banks*, 5 L. J. Ch. 274; *Att.-Gen. v. Newcombe*, 14 Ves. 1, 9; *Att.-Gen. v. Forster*, 10 Ves. 335; *Shaw v. Thompson*, 3 Ch. D. 233.

(*l*) *Shaw v. Thompson*, *supra*.

(*m*) *Ex parte Mawby*, 3 E. & B. 718; *Reg. v. St. Mary, Lambeth*, 3 N. & P. 416; *Davies v. Banks*, *supra*; *Shaw v. Thompson*, *supra*, at p. 251.

(*n*) *Att.-Gen. v. Cuming*, 2 Y. & C. C. C. 139. Cf. *Att.-Gen. v. Lawson*, W. N. 1866, 343.

(*o*) *Att.-Gen. v. Scott*, 1 Ves. Sen. 413; *Wilson v. Dennison*, Amb. 84; *Seymour v. Bennett*, 2 Atk. at p. 482; and see Co. Litt. 186 b.

(*p*) *Att.-Gen. v. Scott*, *supra*, at p. 417; *Wilson v. Dennison*, *supra*, at p. 86.

(*q*) *Att.-Gen. v. Cuming*, *supra*. See *Att.-Gen. v. Scott*, *supra*.

(*r*) *Att.-Gen. v. Scott*, *supra*; *Att.-Gen. v. Cuming*, *supra*.

(*s*) *Att.-Gen. v. Floyer*, 2 Vern. 748.

(*t*) *Att.-Gen. v. Bishop of Litchfield*, 5 Ves. 825. See, however, *Davis v. Jenkins*, 3 V. & B. at p. 159.

(*u*) *Att.-Gen. v. Bishop of Litchfield*, *supra*. See also *Davis v. Jenkins*, *supra*; and *ante*, pp. 195, 196.

(*x*) See *Att.-Gen. v. Scott*, 1 Ves. Sen. at p. 419.

An informality in the appointment of the trustees of a trust to elect to an advowson does not vitiate an election by them. Thus, in *Att.-Gen. v. Cuming* (y), the advowson of a parochial church was by deed vested in nine trustees, upon trust, within four months after a vacancy, to publish notice of a time for a meeting of the parishioners to elect a vicar, and within six months to present the clerk elected by the parties therein mentioned. By the terms of the deed the election was to be by parishioners having a certain qualification in land in the parish, or the major part of them, together with the trustees or the major part of them then assembling at the parish church within the said four months. It was also declared that upon the death of any of the trustees the survivors should from time to time, as they should think fit, before the number of trustees should be reduced to five, or within three months after they should be reduced to four, appoint new trustees, and convey the premises to them, so as to complete the number of nine trustees. It appeared that from the date of the deed to the election of a clerk in 1840, this clause had never been strictly acted upon, though the number of trustees had generally been kept up to nine. On the occasion of an election in 1840 there were eight trustees, two of whom were out of the jurisdiction. Of the remaining six, five signed a written notice of the intended election, which notice was duly published pursuant to the deed, though previous to publication one of the signatures was erased. The same five attended at the meeting, which was held within the proper time, and four of them voted for the successful candidate. These four, and the trustee within the jurisdiction, who was not present at the meeting, joined in the presentation, which was subsequently approved of by the trustees out of the jurisdiction. The remaining trustee refused to join. It was held that the informality in the appointment of the trustees did not vitiate the election, that the dissentient trustee was bound to join in the presentation, and the bishop to present.

Informality in appointment.

Notice of the meeting to elect a clerk must be given to all the trustees, otherwise the election is void (z).

Notice of meeting.

A declaration that the trustees were to elect and present within a limited time after the death of the existing incumbent was construed as directory only, and an appointment made after the prescribed period was upheld (a).

Declaration that election shall take place within a limited time construed as directory. Order to institute and induct.

Lord Eldon appears to have gone so far as to order the bishop to "institute and induct" the person whom the Court considered pro-

(y) 2 Y. & C. C. C. 139.

supra.

(z) *Att.-Gen. v. Scott*, 1 Ves. Sen.

(a) *Att.-Gen. v. Scott*, *supra*, at p. 415;

413. See also *Att.-Gen. v. Cuming*, see also *ante*, p. 178.

- perly elected (*d*). Knight-Bruce, V.-C., however, observed that such an order, taken literally, would exclude the bishop from the right of deciding upon the fitness of the person presented. He thought, therefore, that Lord Eldon's attention could not have been directed to the particular words used in the decree (*e*).
- Tenure of office.** All persons presented to ecclesiastical benefices are considered to be tenants for their own lives, unless the contrary is expressed in the form of donation (*f*).
- Injunction in case of improper appointment.** Where a chaplain or vicar is improperly appointed the Court will by injunction restrain him, or any other person except the one properly appointed, from performing divine service in the church or chapel, and the bishop from instituting or inducting him (*g*).
- After appointment of receiver, interference with chaplain restrained.** In *Att.-Gen. v. St. Cross Hospital* (*h*), after a receiver of the charity property had been appointed, the churchwarden of the parish, insisting that the chapel within the hospital of St. Cross was the parish church, and in order, as he alleged, to try the right, forcibly prevented the chaplain from performing divine service therein. Romilly, M. R., restrained the churchwarden from interfering with the performance of divine worship, but gave him liberty to proceed in any Court to try the question, and to establish any rights claimed by him as churchwarden.
- Annuity to chaplain of gaol.** When an annuity is left to a chaplain, the Court endeavours so to provide for its payment that no reduction shall take place in the salary to which he was previously entitled.
- A testatrix gave an annuity of sixty pounds to a clergyman to preach every Sabbath day to the prisoners at Lincoln, and pray daily to them. At the time of her death the county gaol was the only prison at Lincoln, but subsequently a city gaol was established. Both prisons had chaplains, whose salaries were fixed by the justices of the peace, and paid out of the county rates. An order was made for payment of the annuity to two chaplains in proportion to the number of prisoners under their charge, with liberty to apply in case their salaries should be reduced in consequence of the additional income (*i*).
- What services required.** Where the deed declaring the trusts of an endowment of a district church provided that the income was to be paid to the incumbent so long as he conducted the services according to the rites of the Church of England and the Book of Common Prayer, and
- (*d*) *Edenborough v. Archbishop of Canterbury*, 2 Russ. at p. 112, where the decree is given.
- (*e*) *Att.-Gen. v. Cuming*, 2 Y. & C. C. C. 155, n.
- (*f*) 2 Bl. Com. 123; *Att.-Gen. v. Pearson*, 3 Mer. at p. 403.
- (*g*) *Att.-Gen. v. Earl of Powis, Kay*, 186; *Att.-Gen. v. Cuming, supra*; *Carter v. Cropley*, 8 De G. M. & G. 680.
- (*h*) 18 Beav. 601; affirmed on appeal, 8 De G. M. & G. 38.
- (*i*) *Re Hussey's Charities*, 7 Jur. N. S. 325.

that disputes were to be referred to the bishop, it was held that daily service was not required, and that disputes as to the conduct of the services must be referred to the ordinary (*k*).

It was doubted in that case whether it was in the power of the founder, after the creation of the endowment and the consecration of the church, to impose any additional particular trusts on the fund (*l*). Trusts cannot be altered.

SECTION III.

MINISTERS OF DISSENTING CHAPELS.

The ministers of Dissenting meeting-houses, like trustees (*m*), must be appointed in the mode provided by the deed of trust, the terms of which must, as in all other cases, be complied with (*n*). Appointed according to deed of trust.

Where the trust deed of a Dissenting meeting-house is silent as to the mode of appointment of the minister, regard may in a proper case be had to the usage which has prevailed (*o*). But that is not necessarily conclusive (*p*). Appointment. Usage.

An inquiry may be directed who, according to the nature of the establishment, are the proper persons to elect the minister (*q*). Inquiry.

As a rule, however, where the trust deed contains no express provision, the election is by the majority of the congregation (*r*). Majority of congregation.

Where the trust deed provides that the minister shall be elected by the congregation, it seems that a majority of the congregation is presumed to be intended (*s*).

Mere occupiers of seats or pews, although in one sense forming part of the congregation, are not necessarily so for the purpose of voting at the election of a minister. Occupiers of pews.

Thus, where a meeting-house of the Scotch Church was held in trust for the congregation, it was held that persons who were merely seat-holders, but not members of the church in the sense of communicants, were properly excluded from voting at the election of a minister; and an application on their behalf for an injunction to restrain the individual elected from acting as minister was refused (*t*).

In order that the election of a minister may be valid, due notice must be given of the intention to hold the meeting; and Notice of meeting to elect.

(*k*) *Re Hartshill Endowment*, 30 Beav. 130.

(*l*) *Ibid.*

(*m*) See *ante*, p. 190.

(*n*) *Att.-Gen. v. Pearson*, 3 Mer. at pp. 402, 403.

(*o*) *Ibid.* at p. 403.

(*p*) *Ibid.*

(*q*) *Ibid.* at p. 420, where the form of order is given; *Davis v. Jenkins*, 3 V. & B. at p. 159.

(*r*) See *Att.-Gen. v. Aked*, 7 Sim. 321; *Davis v. Jenkins*, 3 V. & B. 151; *Cooper v. Gordon*, L. R. 8 Eq. 249.

(*s*) *Davis v. Jenkins*, *supra*, at p. 155. See *Fearon v. Webb*, 14 Ves. at p. 20.

(*t*) *Leslie v. Birnie*, 2 Russ. 114.

persons who are not entitled to take part in the election, as, for instance, persons who are not members of the congregation, must not interfere in the proceedings (*u*).

Dissenters' Chapels Act.

The Dissenters' Chapels Act (*x*) does not apply to a case where the question is whether a minister has been duly ordained in accordance with the original trust (*y*).

Election by trustees.

Where the power of appointing the minister, or of approving his appointment, is vested in the trustees, a majority of them may act (*z*).

Survivors.

And an election by three survivors of a body of twelve has been held good (*a*).

Representative of last survivor.

The power cannot, however, be exercised by the representative of the last surviving trustee (*b*).

Tenure of office.

The principle of public policy which, in the case of the Established Church, gives the minister an estate for life in his office, so as to render him in a certain degree independent of his congregation, does not extend to the case of Dissenting ministers (*c*).

Minister may hold office for life or during pleasure.

A minister may accordingly be elected for life, or for a shorter period, or merely during pleasure, and, whichever plan is adopted, the Court is bound to carry it into effect (*d*).

Express provision.

And the provisions of the trust deed with regard to the tenure of office and the mode of dismissal are binding (*e*).

No express provision.

Sometimes the trust deed is silent with regard to the tenure of the office of minister.

In *Att.-Gen. v. Pearson* (*f*), Lord Eldon said: "Although a Court of Equity may not be disposed to struggle hard in support of such a plan (by which the minister is not appointed for life), yet, were the Court to find such a plan established, I know of no principle upon which the Court would not be bound, if called upon for the purpose, to carry it into effect." This seems to suggest that the leaning of the Court would be towards construing the tenure of office of the minister of a Dissenting chapel to be for life.

(*u*) *Perry v. Shipway*, 4 De G. & J. at p. 360; *Rex v. Trustees of Dagger Lane Chapel*, 2 Smith, 20.

(*x*) 7 & 8 Vict. c. 45. See *ante*, pp. 119, 120.

(*y*) *Att.-Gen. v. Murdoch*, 1 De G. M. & G. at p. 144.

(*z*) *Att.-Gen. v. Lawson*, W. N. 1866, 343. Cf. *Att.-Gen. v. Cuming*, 2 Y. & C. C. C. 139; and cases cited *ante*, p. 210. It has been held that a Dissenting minister appointed by part of the trustees cannot maintain an action for arrears of salary against all: *Cooper*

v. Whitehouse, 6 C. & P. 545.

(*a*) *Att.-Gen. v. Lawson*, *supra*.

(*b*) *Davis v. Jenkins*, 3 V. & B. at p. 159. Cf. *Att.-Gen. v. Bishop of Litchfield*, 5 Ves. 825; *Att.-Gen. v. Floyer*, 2 Vern. 748.

(*c*) *Att.-Gen. v. Pearson*, 3 Mer. at p. 403.

(*d*) *Ibid.* at p. 413.

(*e*) *Dean v. Bennett*, L. R. 6 Ch. 489. See *Perry v. Shipway*, 4 De G. & J. 353; and *post*, pp. 220, 221.

(*f*) 3 Mer. at p. 403.

In *Porter v. Clarke* (g), it was held that where the minister was entirely dependent on the voluntary contributions of his congregation, he was dismissible at will by the persons so voluntarily contributing. And in *Cooper v. Gordon* (h), it was considered that the tenure of office of the minister of a Dissenting meeting-house, unless an express provision was contained in the trust deed, was at the will of the majority of the congregation.

In the absence of express provision, the usage of the congregation is important (i).

Where the minister holds his office at the will of the majority of the congregation, he can at any time be removed by such majority (k). And no specific ground for the removal need, apparently, be given (l).

But however arbitrary the power of dismissal may be, it must not be unjustly or oppressively exercised (m).

In *Dean v. Bennett* (n) the deed of settlement of a Baptist chapel provided that every minister should be liable to be dismissed by the decision of the church, made at one meeting and confirmed at a second meeting summoned by notice expressly stating the objects of the meeting. At the first meeting a resolution was passed that the minister, on the ground of alleged drunkenness, and for other reasons, should be removed. The second meeting was convened by notice, which stated that it was for the purpose of confirming and ratifying the resolution passed at the previous meeting. The minister was not present at either meeting. It was held that he was not properly removed, and that it could not be said that a discretion had been exercised by a meeting which, on charges mentioned for the first time, the person charged not being present, came to a vague general finding that he had been guilty of falsehood and drunkenness. And, moreover, that as the notice of the second meeting did not specify the resolution to be confirmed, the meeting was unable effectually to confirm the resolution passed at the previous meeting.

A minister in possession of a meeting-house vested in trustees is merely their tenant at will, and they may at any time determine his tenancy by a demand of possession, without previous notice (o).

(g) 2 Sim. 520.

(h) L. R. 8 Eq. at pp. 258, 259.

(i) See *Att.-Gen. v. Pearson*, 3 Mer. at pp. 412, 413; *Att.-Gen. v. Aked*, 7 Sim. 321.

(k) *Cooper v. Gordon*, L. R. 8 Eq. 249; and see *Att.-Gen. v. Aked*, *supra*; *Re v. Jotham*, 3 T. R. 575. Where the office is for life, it is always deter-

minable on misbehaviour, see *post*, p. 223, n. (d).

(l) See *Dean v. Bennett*, L. R. 6 Ch. at p. 494. Cf. *Reg. v. Governors of Darlington School*, 6 Q. B. 682.

(m) *Dean v. Bennett*, L. R. 6 Ch. 489.

(n) *Supra*.

(o) *Doe v. Jones*, 10 B. & C. 718; *Doe v. M'Kae*, *ibid.* 721; *Broune v.*

Dismissal of minister where office held at will,

must not be oppressive.

Dean v. Bennett.

Minister tenant at will of meeting-house.

The demand of possession puts an end to the legal right of the minister, but it leaves him whatever remedy he may be entitled to against the trustees if they have improperly turned him out (*p*).

Injunction
to restrain
minister
improperly
elected.

A minister irregularly appointed may be restrained by injunction from disturbing the congregation in the use of the chapel and from officiating in it.

In *Perry v. Shipway* (*q*) a chapel had been conveyed to trustees appointed by the majority of the men communicants of a congregation of Dissenters, for the use of the congregation. According to the ordinances of the society the pastor was to be first invited to officiate for a certain time by way of probation, and, if approved, to be elected by a majority at a church meeting called for the purpose. A pastor was invited to officiate for a year, but before the expiration of that time was displaced by a majority of the trustees, on the ground of alleged misconduct. At a meeting professing to be a church meeting, but not duly called, it was resolved that the probationary pastor should become pastor, and that new locks should be placed on the chapel door. By means of locks affixed in pursuance of this resolution, a minority of the trustees retained possession of the chapel, and the probationary pastor continued to officiate after the probationary period had expired. It was held that the majority of the trustees were entitled to an injunction to restrain such use of the chapel.

Minister
properly
dismissed re-
strained from
officiating.

So, also, where a minister has been properly dismissed he may be restrained by injunction from preaching, officiating, or collecting pew-rents (*r*).

Interference
with minister
improperly
dismissed
restrained.

Where, on the other hand, he has been improperly dismissed, an injunction may be granted to restrain any interference with him in the discharge of his duties.

In *Daugars v. Rivaz* (*s*), it appeared that the French Protestant Church in London had been founded by letters patent in 1550. The pastor, when elected, was presented to and approved and instituted by the Crown. The governing body had, apart from the charter of incorporation, funds impressed with a trust in favour of the pastor. The governing body having dismissed the pastor, it was held that, notwithstanding the rights of the Crown as

Dawson, 12 A. & E. 624; *Perry v. Shipway*, 1 Giff. at p. 10; *Cooper v. Gordon*, L. R. 8 Eq. 249. Cf. *Spurgin v. White*, 2 Giff. 487, as to the agent of a society.

(*p*) *Doe v. Jones*, 10 B. & C. at p. 721. See *Att.-Gen. v. Aked*, 7 Sim. 321.

(*q*) 4 De G. & J. 353. See also *Porter v. Clarke*, 2 Sim. 520; and *Spurgin v.*

White, 2 Giff. 473, where the agent of a religious society who had been dismissed was restrained from disturbing the society in its possession of the agent's house.

(*r*) *Cooper v. Gordon*, L. R. 8 Eq. 249.

(*s*) 28 Beav. 233. See also *Ward v. Hipwell*, 3 Giff. 547; *Att.-Gen. v. Aked*, 7 Sim. 321.

visitor, the Court had jurisdiction to see to the performance of the trust and to determine as to the validity of the dismissal; and an injunction was granted to restrain the governing body from hindering the pastor in the exercise of his office.

A minister who has ceased to hold the tenets of the congregation for which the chapel was founded will be removed (*t*), and an injunction may be granted to restrain him from officiating (*u*), or remaining in possession of the meeting-house (*x*); for he cannot convert the chapel to the propagation of doctrines other than those for which it was established.

Ministers holding doctrines differing from those of congregation removed and restrained.

In the case of a Presbyterian chapel, an injunction was granted to restrain the trustees from electing as minister a person not duly licensed by the Church of Scotland (*y*).

Injunction against election of person not licensed.

Pending a suit for the regulation of a Dissenting meeting-house, it is the practice of the Court, if it finds a minister in possession, and ministering in the way in which he should minister, and preaching the doctrines which he ought to preach, to continue him in the meantime, whether he was duly appointed or not; for the first point is to have the service performed. The Court will also pay him his salary (*z*).

Minister retained pending suit.

A mandamus may be granted to the trustees of an endowed meeting-house requiring them to admit to the use of the pulpit as pastor, minister, or preacher, a person duly elected (*a*).

Mandamus to admit minister after election.

An application, however, for a mandamus to restore a person to the office of minister of a congregation and to the use of the pulpit, will not be successful unless he makes out a *prima facie* title to such office, and shows at least that he has complied with all the forms necessary to constitute his right.

Mandamus to restore minister.

Thus, in *Rex v. Jotham* (*b*), where the minister of an endowed Dissenting meeting-house had been expelled by a majority of the congregation, the Court of Queen's Bench refused a mandamus to restore him, for which he applied to enable him to justify his conduct, because he merely stated his supposition that he was elected for life, and had not gone through all the ceremonies required by the sect to which he belonged, or shown his compliance with the requisitions of the Toleration Act. Buller, J., in giving judgment,

(*t*) *Att.-Gen. v. Munro*, 2 De G. & Sm. 122.

(*u*) *Att.-Gen. v. Welsh*, 4 Hare, 572. See also *Att.-Gen. v. Munro*, *supra*, at p. 196; *Att.-Gen. v. Murdoch*, 1 De G. M. & G. 86; *Glen v. Gregg*, 21 Ch. D. 513.

(*x*) *Broom v. Summers*, 11 Sim. 353.

(*y*) *Milligan v. Mitchell*, 1 My. & K. 446.

(*z*) See per Lord Eldon, in *Foley v. Wontner*, 2 J. & W. at p. 247. Cf. *Milligan v. Mitchell*, *supra*. As to the jurisdiction of the Court of Chancery in the case of Dissenting meeting-houses, see *Davis v. Jenkins*, 3 V. & B. 151, 155; and *ante*, p. 21.

(*a*) *Rex v. Barker*, 3 Burr. 1265.

(*b*) 3 T. R. 575. See also *Rex v. Trustees of Dagger Lane Chapel*, 2 Smith, 20.

drew a distinction between the case of a mandamus to admit and a mandamus to restore. "The former," he said, "is granted merely to enable the party to try his right, without which he might be left without any legal remedy. But the Court has always looked much more strictly to the right of the party applying for a mandamus to be restored. In these cases he must show a *prima facie* title; for if he has been before regularly admitted, he may try his right by bringing an action for money had and received for the profits. Therefore, in order to entitle himself to this extraordinary remedy, he must lay such facts before the Court as will warrant them in presuming that the right is in him."

SECTION IV.

SCHOOLMASTERS, ETC.

Appointment
of school-
master,

Schoolmasters are appointed in various manners, but in all cases the mode of appointment or election, if any, set forth in the instrument of foundation or scheme should be adhered to (c).

by founder;

If the founder of a school gives no direction as to the appointment or election of a schoolmaster, and appoints no visitors, he and his heirs, as patrons, are entitled to appoint the schoolmaster. If, however, the founder appoints a visitor, then the appointment of the schoolmaster rests with the visitor (d).

by majority
of electors.

Where the nomination of a schoolmaster is given to a body of men, though not a corporation, an appointment made by the majority is good. In *Whithnell v. Gartham* (e), a power to appoint a schoolmaster of a grammar school was given to the vicar and all the churchwardens of a parish. The usage had been for the vicar and a majority of the churchwardens to appoint; and it was held that the nomination of a schoolmaster by the vicar and the majority of the churchwardens was valid, especially as it was supported by usage.

Rescission of
resolution.

While the meeting of the electors continues the majority of them may rescind their resolution appointing a schoolmaster. Thus, in *Att.-Gen. v. Matthew* (f), the persons having the nomination of the master of a charity school, on the occurrence of a vacancy, held

(c) *Att.-Gen. v. Lord Carrington*, 4 De G. & Sm. 140. For a grant of the right to nominate the master of a hospital, see *Att.-Gen. v. Evelme Hospital*, 17 Beav. 366.

(d) *Legh v. Lewis*, 1 East, 391, 395.

(e) 6 T. R. 388. See also *Wilkinson v.*

Malin, 2 C. & J. 636, 655, where it was held that a majority of the trustees might appoint, and that the appointment need not be in writing; *Re Butterwick Free School*, 15 Jur. 913.

(f) 3 Russ. 500.

a meeting to elect a successor. A candidate was elected by the majority, and a minute of his election entered in the minute-book. Immediately afterwards, upon its appearing that the person elected held an office which prevented his devoting his time exclusively to the school, the majority of the electors, before the meeting was dissolved, reversed their vote, rescinded the minute of election, and postponed the election to a subsequent day. Upon an information at the relation of the person first elected, praying a declaration that he was duly elected, and seeking to restrain the trustees from paying the salary to the person subsequently appointed, it was held that the electors had power to act as they had done, as they had proceeded *bonâ fide* and with a view to the welfare of the charity.

Sometimes it cannot be ascertained in whom the right of appointing a schoolmaster is vested, and in such case an application to the Court, or in the case of the Crown being visitor to the Lord Chancellor, or to the Charity Commissioners, may be necessary.

Uncertain
who has
nomination.

In *Att.-Gen. v. Black (g)*, the instrument of foundation contained a provision that the schoolmaster was to be appointed by three of the original feoffees or their respective heirs male for the time being, and the curate of the church of W——, or three of them, and if there should be no such heir male, then by the curate, churchwardens, and six other of the chief inhabitants of W. The three feoffees being all dead, and there being no heir male, disputes arose as to naming the chief inhabitants to join with the curate and churchwardens in appointing a schoolmaster, and upon the last vacancy two persons were elected. Upon petition to the Lord Chancellor as visitor, both elections were declared void, and a reference to the Attorney-General was directed to consider what directions or alterations as to the election of a schoolmaster upon that or any future vacancy should be made.

The right of nomination may, either in the event of the failure of the heirs of the patrons, or in the event of the trustees not exercising their right within a certain period, be given to others (*h*).

Nomination
of school-
master does
not lapse.

The nomination of a schoolmaster, however, does not lapse like the presentation to a living (*i*). Thus, the statutes of a charity school provided that the wardens were to nominate a master within sixty days after an avoidance, and upon their default the Dean and Chapter of York were to make the nomination within thirty days, after which the duty devolved upon the bishop. The wardens nominated a person who was disqualified through not

(g) 11 Ves. 191. See *Att.-Gen. v. Hewer*, 2 Vern. 387.

(h) *Att.-Gen. v. Black*, *supra*.

(i) *Att.-Gen. v. Wyliffe*, 1 Ves. Sen. 80.

being in priest's orders as the statute required; the bishop thereupon sent notice to the chapter, and as they did not make the nomination, he, after the expiration of the thirty days, himself nominated another person, who afterwards, apparently without having taken actual possession, resigned his office. In five days afterwards the wardens again nominated the person whom they had nominated previously, he having in the interval taken priest's orders. It was held that the second nomination by the wardens was valid (j).

Qualification. A person who has a controlling power of assent to the election of a schoolmaster cannot himself hold the office, and if appointed he will be removed by the Court (k).

Priest's orders. A person to be elected schoolmaster must possess the qualification required by the statutes or instrument of foundation. Thus, where the schoolmaster was required by the statutes to be in priest's orders, it was held that the necessity of the person elected being in priest's orders could not be dispensed with (l). "I should doubt, indeed," said Lord Hardwicke, "whether to be in priest's orders should be strictly taken according to the Canon Law, or agreeable to common parlance, if it turned on that alone; but the subsequent statutes show that such orders were meant as capacitated the person to celebrate Mass; which is a decisive construction on the words of the former statute, and binds me down; for since the Reformation a charitable foundation for saying Mass, or praying for the souls, &c., is adjudged to be performed by saying the service according to the Liturgy."

Church of England school. The schoolmaster of a Church of England school ought, *cæteris paribus*, to be a member of that Church, even though the instruction may be open to scholars of any religious denomination. It is not, however, absolutely necessary that the schoolmaster should belong to that Church, and, if the circumstances are sufficiently peculiar to justify it, the trustees do not commit a breach of trust by appointing a Dissenter (m).

Tenure of office. The tenure of the office of schoolmaster depends upon the instrument of foundation or scheme under which he is appointed (n).

Appointment for life. He may, if the terms of the instrument of foundation permit, be appointed for life (o). In such case he is said to have an estate of freehold in his office.

(j) *Att.-Gen. v. Wyeliffe*, 1 Ves. Sen. 80.

(k) *Re Risley School*, 8 L. J. O. S. Ch. 129.

(l) *Att.-Gen. v. Wyeliffe*, *supra*.

(m) *Att.-Gen. v. Clifton*, 32 Beav. 596. Cf. *Baker v. Lee*, 8 H. L. C. 495; and *ante*, p. 192.

(n) *Att.-Gen. v. Black*, 11 Ves. 191; *Reg. v. Governors of Darlington School*, 6 Q. B. 682. See *Re Alley's Coll., Dulwich*, 1 App. Cas. 68.

(o) *Re Chipping Sodbury School*, 8 L. J. O. S. Ch. 13; *Att.-Gen. v. Warden of Louth Free Grammar School*, 14 Beav. 201; and see *Legh v. Lewis*, 1 East, 391; *Re*

The master may also be a corporator, as where the schoolmaster alone, or the schoolmaster in conjunction with the usher, is incorporated. In these cases we have seen to what extent the visitor has jurisdiction (*p*).

Master may be corporator.

He may, on the other hand, be appointed to hold office merely during pleasure (*q*).

Appointment during pleasure, subject to restrictions on removal.

Or again, although his office may not be an office of freehold, the power of removal may nevertheless be fettered by various restrictions (*r*).

Where a person was appointed by trustees of a charity clerk and solicitor to the charity, and the charity was regulated by a scheme which did not contemplate any such office, and did not empower the trustees, even if they wished, to create such an office in freehold, it was held that he had not a freehold in his office, but merely held it *durante bene placito* (*s*).

Office of clerk and solicitor held during pleasure.

In order to obtain greater power over schoolmasters they have sometimes been required to give bonds of resignation on their appointment. The validity of such bonds has been questioned.

Bonds of resignation.

In *Legh v. Lewis* (*t*) a schoolmaster of an ancient school, who, as it was alleged, had a freehold in his office, on his appointment gave a bond to his patron to resign when required by him or his heirs in writing so to do. The Court of King's Bench held that the bond was good.

Legh v. Lewis.

Lord Kenyon, C. J., said, "I cannot see anything illegal or wrong in the patron of this school taking a general bond of resignation from the schoolmaster whom he appoints. Many good reasons may occur for taking such a security; it enforces his good behaviour, and may tend to prevent those ill consequences which too frequently happen from the neglect of those whose duty it is to superintend such institutions. What is this but a more easy method of exercising a visitatorial authority?" Lawrence, J., however, observed, "It is true that a bond may be taken to enforce the observance of those duties which by law are required to be performed by the appointee of an office; but then it should be so expressed in the condition. But a general bond like the present, though it may be made use of for good, may also be made use of for bad purposes; at least, there is nothing on the face of the instrument to restrain the improper use of it, as there is

Royston Free Grammar School, 2 Beav. 228; *Re Phillips' Charity*, 9 Jur. 959; *Benthall v. Earl of Kilmorey*, 25 Ch. D. 39.

(*p*) *Ante*, p. 77.

(*q*) *Re v. Governors of Darlington School*, 6 Q. B. 682.

(*r*) *Re Allyn's Coll., Duwich*, 1 App. Cas. 68. Cf. *Benthall v. Earl of Kilmorey*, 25 Ch. D. 39; and see *Wilkinson v. Malin*, 2 Tyr. 544.

(*s*) *Re Parish of St. Edmund*, Times, March 5, 1889.

(*t*) 1 East, 391.

where it is conditioned for the due performance and execution of the office. And as Lord Chief Justice Willes observed, in *Laying v. Paine* (u), such a general bond of resignation may be used as the means of selling the office, or to favour the partial views of the patron, by compelling the appointee to regulate his conduct, not by the duties of his office, but in subservience to the pleasure of his patron."

The case came afterwards before the Exchequer Chamber upon a writ of error (v), but the Court declined to give any opinion, because it did not sufficiently appear upon the record that the office was freehold.

*Re Royston
Free Grammar
School.*

In the case of *Re Royston Free Grammar School* (w), the trustees of a free grammar school (the origin of which did not appear) held property "to the use of the school." Having elected a school-master, they obliged him to enter into a bond and agreement, stipulating that he should not have or claim a freehold in the school or estates, and should quit at six months' notice, and should not intermeddle with the estates, and containing other stipulations as to the government and management of the school. Upon petition under Romilly's Act, it was held by Lord Langdale, that though the regulations imposed by the trustees might be proper to be observed under their order and direction, yet that it was not proper to enforce them by taking a bond from the schoolmaster; and that the trustees had exceeded their powers. A reference was accordingly directed to approve of a proper scheme for the management of the school.

In the last-mentioned case *Legh v. Lewis* (x) does not appear to have been cited. The two cases, however, are to some extent distinguishable. In *Legh v. Lewis*, the bond was taken by the patron; in the case of *Re Royston Free Grammar School* it was taken by trustees. And the decision in the latter case was not that the bond itself was necessarily illegal, but that the trustees had not the power to impose it.

Invalid if
corrupt use
intended.

If any corrupt use were intended to be made of such bond, the Attorney-General might *ex officio* be called upon to interfere, and upon application to the Court the appointment would be taken out of the hands of him who so exercised it corruptly (y).

Removal
where office
held during
pleasure.

Where the master is appointed to hold office during pleasure, the trustees may at any time remove him at their discretion, pro-

(u) Willes' Rep. 571, 574.
(v) Nom. *Lewis v. Legh*, 3 Bos. & P.
231.
(w) 2 Beav. 228. See *Att.-Gen. v.*

Governors of Atherstone Free School, 3
My. & K. 544.
(x) 1 East, 391.
(y) *Legh v. Lewis*, *supra*, at p. 395.

vided they do not act from corrupt or improper motives (z). And it seems that no reason for his removal need be given (a). But however arbitrary the power of removal may be it must not be exercised oppressively or unjustly (b).

Where the instrument of foundation makes special provisions as to the mode in which a master is to be dismissed, he cannot be dismissed unless those provisions are observed.

Provisions as to removal must be observed.

Where the Act of Parliament regulating a school provided for the dismissal of the master by a certain majority at a meeting constituted and convened in a particular manner of the governors of the college, he could only be dismissed in the mode so provided (c).

Where the master is appointed to his office for life, he is removable in case of misbehaviour (d).

Removal where appointment for life.

Before removing a schoolmaster for misconduct it is the duty of the trustees to reduce the charges which they make against him to writing, and to cause them to be communicated to him, and to give him a reasonable opportunity of meeting them (e).

But if that has been done, and the trustees have come to their conclusion upon evidence sufficient to satisfy a reasonable man, their decision cannot be interfered with (f).

A schoolmaster who has been improperly appointed, or who has been properly removed, may be restrained by injunction from presenting himself at the school and teaching therein, and from remaining in occupation of the school-house (g).

Injunction to restrain master improperly appointed or removed.

Conversely, where a schoolmaster is improperly removed, an injunction may be granted to restrain the trustees from enforcing his dismissal and ejecting him (h).

Injunction to restrain dismissal and ejection.

The Court will also interfere, where a schoolmaster has been improperly appointed or removed, to declare such appointment or removal void (i). And this it will do as well in the case of a corporation as in the case of individual trustees (j).

Removal declared void.

(z) *Re Buxton School*, 11 Jur. 581; *Reg. v. Governors of Darlington School*, 6 Q. B. 682; *Re Bedford Charity*, 5 Sim. 578.

(a) *Reg. v. Governors of Darlington School*, *supra*; *Dean v. Bennett*, L. R. 6 Ch. 489, 494.

(b) *Dean v. Bennett*, *supra*. See also *Re Phillips' Charity*, 9 Jur. 959.

(c) *Re Allyn's Coll.*, *Dulwich*, 1 App. Cas. 68. See *Willis v. Childe*, 13 Beav. 117; and cf. *Dean v. Bennett*, L. R. 6 Ch. 489.

(d) A person appointed to an office *quamdiu se bene gesserit* has an estate for life: *Cruise*, Dig. tit. xxv. pl. 27. Conversely, if the office is granted for life,

there is an implied condition that the grantee shall hold it only *quamdiu se bene gesserit*: *ibid.* pl. 28.

(e) *Re Phillips' Charity*, *supra*. See *Dean v. Bennett*, *supra*.

(f) *Re Fremington School*, 11 Jur. 421.

(g) *Holme v. Guy*, 5 Ch. D. 901. See *ante*, p. 216.

(h) *Willis v. Childe*, 13 Beav. 117.

(i) *Dummer v. Corporation of Chippenham*, 14 Ves. 245; *Att.-Gen. v. Lord Carrington*, 4 De G. & Sm. 140, where it was held that the Court of Chancery would interfere although a Court of Law might have concurrent jurisdiction.

(j) *Dummer v. Corporation of Chippenham*, *supra*.

Thus, where a schoolmaster has been deprived of his office from improper motives, as because he voted for a particular candidate at a parliamentary election (*k*), or unjustly and oppressively (*l*), however arbitrary the power of removal may be (*m*), the Court will declare such removal void.

Not where trustees have acted reasonably.

Where there is visitor Court does not interfere,

unless in case of trust,

Willis v. Childe.

Grammar school

It will not, however, interfere where the trustees have arrived at their conclusion upon reasonably sufficient grounds (*n*).

It has been stated (*o*) that as a rule where there is a visitor who has jurisdiction to act with regard to the amotion of a schoolmaster the Court declines to interfere. And the case is the same where visitatorial power is reserved to the Charity Commissioners (*p*).

But even though there is a visitor the Court will interfere in the case of an express trust; for the existence of a visitor does not prevent the Court from exercising its jurisdiction to see that trusts are properly executed.

In *Willis v. Childe* (*q*) a grammar school founded by King Edward VI. (of which there was a visitor) was regulated by a scheme which authorized the trustees, "upon such grounds as they should at their discretion in the due exercise and execution of the powers and trusts reposed in them deem just," to remove the master at one, and confirm the removal at a subsequent, special meeting. The trustees, having grounds of complaint against the master, without his knowledge referred the matter to a committee, who investigated the case in his absence and without his knowledge, and reported against him. The trustees, without communicating the report to or hearing him, confirmed it in his absence, and resolved to remove him; and they summoned a second meeting to confirm the resolution. The master then attended and was heard, and the removal was confirmed without any other hearing or inquiry in his presence. It was held by Lord Langdale, M. R., first, that the scheme did not confer upon the trustees an arbitrary power to dismiss the master upon any grounds which they might deem just, free from any control of the Court; and secondly, that the master had had no proper opportunity afforded him of defending himself, no sufficient means of explanation, and no means of proving his defence. The trustees were therefore restrained from enforcing the dismissal and ejecting the master.

The relationship of trustee and *cestui que trust* does not exist

(*k*) *Dummer v. Corporation of Chippenham*, 14 Ves. 246; *Doe v. Hadden*, 3 Doug. 310.

(*l*) *Re Phillips' Charity*, 9 Jur. 959.

(*m*) See *Dean v. Bennett*, L. R. 6 Ch. 489.

(*n*) *Re Fremington School*, 11 Jur. 421,

(*o*) *Ante*, pp. 92, 93. See *Att.-Gen. v. Magdalen Coll., Oxford*, 10 Beav. 402; *Whiston v. Dean and Chapter of Rochester*, 7 Hare, 532.

(*p*) See *Reg. v. Wilson*, W. N. 1888, 12.

(*q*) 13 Beav. 117; see also *ante*, p. 95.

between the dean and chapter of a cathedral church, and the head-master of the grammar school attached to it, where both the cathedral and school are governed by the statutes of the founder, and the head-master is paid out of the common funds of the endowment, so as to give the Court jurisdiction notwithstanding the existence of a visitor (*r*). Therefore, where the Dean and Chapter of Rochester, in exercise of a power vested in them by the statutes of the founder, summarily dismissed the head-master of the grammar school attached to the cathedral from his office without hearing him in his defence, the Court refused to interfere, on the ground that the matter was one within the cognisance of the visitor (*s*).

attached to
cathedral.

Where a person has acted as schoolmaster for a considerable period, although he was originally improperly appointed, the Court will not remove him, or allow him to be removed, unless he can be shown to have been guilty of misconduct which might have been made a ground for his discharge if his appointment had been originally right (*t*).

Schoolmaster
improperly
appointed
not removed
after lapse of
time.

Where a person became qualified for the office of schoolmaster in October, and in that month gave the electors notice of his claim to be appointed, it was held that a petition, presented by him in the following March, for the removal of a master appointed in the previous July, was not too late (*u*).

Where there had been a double election, declared void by the Lord Chancellor upon a petition to him as visitor in right of the Crown, in consideration of one of the schoolmasters elected having done the duty since the death of the last schoolmaster, and upon his undertaking to continue to do duty until a new election or appointment of a schoolmaster, it was directed that the rents and profits (in which the master had a freehold) should be paid to him during the time he should perform the duty, or until further order (*x*).

Double
election.

The Court will not remove a schoolmaster in consequence of a mere misunderstanding as to his duty. But where the duty is prescribed, the master cannot retain the situation without performing it (*y*).

Misunder-
standing of
duty.

A master will be removed from a school if he insists upon holding an office inconsistent with the performance of his duties as

Holding office
inconsistent
with duties.

(*r*) See *ante*, p. 95.

(*s*) *Whiston v. Dean and Chapter of Rochester*, 7 Hare, 532.

(*t*) See per Lord Eldon in *Att.-Gen. v. Hartley*, 2 J. & W. at p. 375. See also *Att.-Gen. v. Dixie*, 13 Ves. 519, 541; *Foley v. Wontner*, 2 J. & W. at p.

247; and cf. *ante*, pp. 193, 194.

(*u*) *Att.-Gen. v. Lord Carrington*, 4 De G. & Sm. 140.

(*x*) *Att.-Gen. v. Black*, 11 Ves. 191, 193.

(*y*) Per Lord Eldon in *Att.-Gen. v. Coopers' Co.*, 19 Ves. at p. 192.

schoolmaster, or which by the instrument of foundation it was intended he should not hold; but he may hold another office if it is not inconsistent with the performance of his duties as schoolmaster, and if it does not appear to have been intended that he should not hold such office.

*Att.-Gen. v.
Hartley.*

In *Att.-Gen. v. Hartley* (s) it was held that the offices of schoolmaster and vicar of the parish might be held together. "A schoolmaster," said Lord Eldon, "has his duties prescribed to him by the rules and regulations, and, if you please so to put it, by the practice of the school. If, being vicar of the parish, he cannot observe those rules and regulations, and act according to that practice, that would be a ground for his removal from the school. But, looking at the duties of the offices, I have to ask, whether, as far as I know them, they are incompatible? He happens to be vicar of Bingley; but if he were vicar of any other place, would that be incompatible? If he neglected his duty at his vicarage, provided he performed his duty as schoolmaster, I should have nothing to do with his neglect as vicar. But if you could show that he had given so much personal attention to the vicarage as to neglect his school, the Court would dismiss him on the ground of his neglect of his duty as schoolmaster; but I cannot find any pretence for that in the evidence. If, on the other hand, it appeared that, according to the intention of the founders, the vicar of Bingley could not be the schoolmaster, then the Court would not have to consider whether the two offices are incompatible, but its dry, simple, naked duty would be, to remove him on the ground of that intention. But for that purpose the intention must be clearly manifested, and though I admit, upon reading the instruments, that I think the authors of these charities did not look forward to the event of the vicar being the schoolmaster, yet I cannot collect anything which says that he shall not, and I think, therefore, that that part of the information must be dismissed" (a).

Appointment
by leave of
Court subject
to future
scheme.

Where the revenues of a grammar school had increased tenfold since the stipend of the master had been regulated by a scheme, the Court on a vacancy in the office restrained the appointment of a new master until some arrangement had been come to with regard to a new scheme. Liberty was afterwards given to appoint a new

(s) 2 J. & W. 353, 360, 376.

(a) The reasoning of Lord Eldon in this judgment is far from satisfactory. It was delivered at a time when it was allowed by law, and even bishops did not consider it improper, to confer a plurality of livings upon a single individual. That a master of a school

can perform its duties and those of a parish, without neglecting one of them, is simply impossible; and even assuming that, by neglecting his parish, he might adequately perform the duties of the school, it can scarcely be right to allow a man to remain in a post where his interest and duties are conflicting.

master to hold office subject to any alteration with regard to management of the school, salary, &c., which the Court might order (b).

It is provided by the Grammar Schools Act (c) that any schoolmaster appointed in a grammar school after the passing of that Act shall receive his appointment subject to such new statutes as may be made by the Court in pursuance of proceedings commenced under the Act within six months after such vacancy shall have occurred (d); and lapse of the right of nomination of the master takes place from the time of settling the new statutes and not from the time of the avoidance (e).

The Court may empower the person or persons having powers of visitation in respect of the discipline of any grammar school, or specially appointed to exercise the same under the Act, and the governors, or either of them, after such inquiries and by such mode of proceeding as the Court shall direct, to remove any master of any grammar school who has been negligent in the discharge of his duties, or who is unfit or incompetent to discharge them properly and efficiently, either from immoral conduct, incapacity, age, or other infirmity or causes whatsoever (f). Power is given in certain cases to assign a retiring pension to a master removed for incompetency, age, or infirmity (g); and premises held over by masters dismissed or ceasing to hold office may be recovered in a summary manner under an order of the justices in petty sessions assembled (h).

By sect. 22 of the Charitable Trusts Act, 1853 (i), the Board of Charity Commissioners are empowered, upon proof of negligence, unfitness, or incompetency, either from immorality, age, or any other cause, to empower the trustees to remove any schoolmaster, schoolmistress, or other officer of a charity. But where there is a special visitor of the charity, his consent is necessary.

By the Charitable Trusts Act, 1860 (k), the Board are empowered to make orders for the removal of a schoolmaster or schoolmistress or other officer of a charity. Notice of the proposal to make such order must be given, and there must be a sufficient hearing of the matter by the Board (l). And a

(b) *Att.-Gen. v. Warden of Louth Free School*, 14 Beav. 201.

(c) 3 & 4 Vict. c. 77, s. 11; App. I. of this Book, *post*. As to what schools are excepted from the Act, see sect. 24.

(d) Sect. 11.

(e) Sect. 12.

(f) Sect. 17.

(g) Sect. 18.

(h) Sect. 19; and see sect. 20.

(i) *Post*.

(k) Sect. 2, and notes thereto, *post*.

(l) Sect. 6, *post*.

right of appeal by petition to the High Court is given in some cases (*m*).

Removal of
schoolmasters
and mistresses
appointed
after 28th
August, 1860.

By sect. 14 (*n*) of the same Act every schoolmaster and mistress appointed after the date of the Act (*o*) is removable after reasonable notice by the trustees or persons acting in the administration of the charity. But such removal of a master or mistress, who but for this provision would be irremovable, must be determined on by all or a majority of such trustees or administrators assembled at a meeting convened as provided by the section, and notice of the meeting must be sent to the master or mistress. The resolution of the meeting for the removal of such master or mistress must be certified under the hands of the trustees, or of the chairman of the meeting, and sent within seven days to the Board of Charity Commissioners, and it does not take effect until approved by the Board. If there is a special visitor of the charity, his written consent is also necessary. The section does not apply to an endowed grammar school.

Recovery of
possession of
school houses,
&c.

Power is given to the justices in petty sessions assembled to give possession of any house, buildings, land, or property of a charity held over by any schoolmaster or mistress or other officer, or any recipient of the benefit of a charity, who shall have been removed from or shall cease to hold his or her office or place (*p*).

End. Schools
Acts.

Schemes under the Endowed Schools Acts must provide (*q*), except in the case of a school maintained out of the endowment of a cathedral or collegiate church, or where the instrument of foundation makes express provision for instruction in the doctrines of a particular sect (*r*), that a person shall not be disqualified for being a master by reason only of his not being or not intending to be in holy orders. And such schemes must also provide for the dismissal at pleasure of all teachers and officers (*s*).

Head masters
of public
schools.

Under the Public Schools Act, 1868 (*t*), the head masters of Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby, and Shrewsbury are appointed by and hold office at the pleasure of the new governing body (*u*).

Power of
governing
body to
remove.

Under this Act the governing body are not bound to assign any reason for the dismissal of a head master, and unless it is shown that they have exercised their discretion improperly, for some

(*m*) Sect. 8, and notes thereto, *post*.

(*n*) *Post*.

(*o*) 28th Aug. 1860.

(*p*) Sect. 13.

(*q*) End. Schools Act, 1869, s. 18,

post.

(*r*) Sect. 19.

(*s*) Sect. 22.

(*t*) 31 & 32 Vict. c. 118.

(*u*) Sect. 13.

corrupt, improper, or collateral object, the Court will not interfere with their decision (*v*).

And although the head master was appointed by the old trustees of the school, the new governing body constituted by the Act are not bound by the rules and regulations in force previously to their appointment, but their power of dismissal is unfettered by those restrictions (*x*).

All other masters are appointed by and hold office at the pleasure of the head master (*y*).

Masters other
than head
masters.

(*v*) *Hayman v. Governors of Rugby School*, L. R. 18 Eq. 28, 85, 87.

(*x*) *Ibid.*

(*y*) 31 & 32 Vict. c. 118, s. 13.

CHAPTER IX.

REGULATION AND MANAGEMENT.

SECTION I.

REGULATION AND MANAGEMENT OF CHARITIES GENERALLY.

Powers and Duties of Trustees.

Protection of
property and
observance of
trusts.

It is the duty of trustees of charities, as it is of all trustees, to get in and protect the property entrusted to their charge, and in all things to execute the trusts in strict accordance with the instrument of foundation or the scheme by which the charity is regulated.

Any neglect of these duties is a breach of trust, the consequences of which may be visited with more or less severity upon the trustees.

Course to be
adopted in
case of
difficulty.

Where from change of circumstances or otherwise difficulty occurs in carrying out the intentions of the founder, or the provisions contained in the instrument of foundation or scheme regulating the charity, it is the duty of the trustees to take such steps as may be necessary for the purpose of obtaining a scheme, or an alteration of the existing or the establishment of a new scheme (a).

Application
to Charity
Commis-
sioners.

Thus, where a charity school had been handed over to a school board under the Elementary Education Act, 1870 (b), and it had consequently become impossible to apply the fund according to the directions of the trust deed, it was held that the proper course was to apply to the Charity Commissioners for a new scheme (c).

Application
for advice.

Under the Charitable Trusts Act, 1853 (d), trustees or other persons concerned in the management or administration of a charity may apply to the Charity Commissioners for their opinion, advice, or direction respecting the charity; and any person acting on such

(a) *Andrews v. McGuffog*, 11 App. Cas. 313. See *Manchester School Case*, L. R. 2 Ch. 497.

(b) See *post*, p. 256.

(c) *Re Poplar and Blackwall Free School*, 8 Ch. D. at pp. 545, 546.

(d) Sect. 16, *post*.

opinion or advice is indemnified unless he was guilty of fraud, wilful concealment, or misrepresentation in obtaining it.

Sometimes difficulties of such a character arise that the interposition of Parliament is necessary. This may be either because the desired deviations from the intention of the founder are such as the Court and the Charity Commissioners have not jurisdiction to authorize; or because the proposed provisions are inconsistent with some existing statute.

Application to Parliament.

With regard to applications to Parliament on the first of these grounds, it is important to bear in mind the extensive application now given to the doctrine of *cy-près* (e).

It was formerly usual in cases of this kind to make an application to the Court of Chancery for leave to apply to Parliament; as otherwise, in the event of failure to obtain an Act, the Court would refuse to give the trustees the expenses of the application to Parliament.

"I do not recollect," said Lord Eldon (f), "any case, in which the trustees of a charity have been allowed the costs incurred in endeavouring, without the previous sanction of the Court, to procure an Act of Parliament which did not pass. In the case of *Downing College*, the costs of the Acts of Parliament were allowed; but those were Acts both of which the Legislature thought proper to pass, and the benefit of both of which the College had; and this Court, I think, could not, with any propriety, dispute the prudence of measures, although taken without its authority, which the Legislature itself had enacted as prudent."

Where an Act of Parliament had provided for the application of the surplus funds of a charity, but the mode of application thereby pointed out had become inexpedient or useless, it was held that the Court had jurisdiction, under Romilly's Act (g), to direct an inquiry as to the expediency of applying for another Act to authorize an application of the surplus in a different mode (h).

Inquiry as to application to Parliament.

Under the Charitable Trusts Acts (i), the Charity Commissioners have power, on the application of trustees and other persons concerned in the management or administration of a charity, to approve provisionally of a scheme varying the original endowment, and submit it to Parliament.

Power of Charity Commissioners to frame schemes requiring Parliamentary authority.

(e) *Ante*, pp. 154 *et seq.*; and see *Re Campden Charities*, 18 Ch. D. 310.

(f) *Att.-Gen. v. Earl of Mansfield*, 2 Russ. at p. 519.

(g) 52 Geo. III. c. 101.

(h) *Re Shrewsbury Grammar School*, 1 Mac. & G. 324; and see *Att.-Gen. v.*

Corporation of Norwich, 12 Jur. 424.

(i) Charit. Trusts Act, 1853, ss. 54—60, amended by Charit. Trusts Amend. Act, 1855, s. 43, *post*. The powers given by these sections are rarely exercised.

Duty of trustees to account.

It is the duty of charity trustees, as it is of all trustees, to be ready and willing to account to any person or body to whom they may be bound to account, although no requisition for such accounts may be made (*k*).

Trustees who fail in this duty are liable to the costs of proceedings to compel them to account, even though the result be to show that the charity is indebted to the trustees (*l*).

Direction to account annually to Att.-Gen.

Where the objects of the charity were numerous, and the sums to be distributed small, a clause was inserted in a scheme directing the party charged with the distribution to lay a debtor and creditor account annually before the Attorney-General, notwithstanding that there was a regular auditor of the charity accounts (*m*).

Accounts to be submitted to Charity Commissioners.

Under the Charit. Trusts Act the trustees or persons acting in the administration of every charity must, in books to be kept by them for that purpose, regularly enter or cause to be entered full and true accounts of all money received and paid on account of such charity (*n*), and annually make out and deliver or transmit copies of their accounts to the Charity Commissioners at their office in London (*o*).

Accounts of parochial charities.

The Local Government Board (*p*) are empowered to require from all persons in whom any freehold, copyhold, or leasehold estate, or any other property or funds belonging to a parish and applicable for the relief of the poor, or in diminution of poor rate, or who shall be in receipt of the rents, profits and income of such property, an account in writing of the place where the estate is situate, the securities upon which the funds are invested, and such other particulars as the Board may require; and such statement, or a true copy of it, must be open for the inspection of the owners of property and ratepayers in the parish. But the provision does not apply to funds raised by voluntary contributions of the inhabitants (*q*).

Account of charity moneys distributed by churchwardens.

It is the duty of the vestry clerk, unless otherwise directed by the Local Government Board (*r*), to keep the account of all charity money which the churchwardens or overseers are authorized or accustomed to distribute (*s*).

Custody of deeds.

Trustees or other persons having the custody of deeds or muni-

(*k*) *Att.-Gen. v. Gibbs*, 1 De G. & Sm. 156.

(*l*) *Ibid.*

(*m*) *Att.-Gen. v. Donnington Hospital*, 16 Jur. 899.

(*n*) Charit. Trusts Act, 1853, s. 61, *post*.

(*o*) Charit. Trusts Amend. Act, 1855, ss. 44 and 45, *post*, where the provisions with regard to the accounts of trustees

will be found. As to the accounts required by the Charity Commissioners, see note to sect. 44 of the Charit. Trusts Amend. Act, 1855, *post*.

(*p*) Substituted for the Poor Law Board by 34 & 35 Vict. c. 70.

(*q*) Poor Law Act, 4 & 5 Will. IV. c. 76, s. 85.

(*r*) See n. (*p*), *supra*.

(*s*) 13 & 14 Vict. c. 57, s. 7.

ments belonging to a charity may deposit them for security in a repository which may be provided by the Charity Commissioners (f).

They may also, on obtaining an order of the Charity Commissioners, transfer stock or pay money to the official trustees of charitable funds in trust for the charity (u).

Transfer of funds to official trustees.

Trustees or persons administering charities exempted from the Charitable Trusts Acts may apply to the Charity Commissioners to have the benefit of the Acts extended to such charities (v).

Exempted charities may apply for benefit of Charit. Trusts Acts.

Trustees of charities may pay funds into Court under the Trustee Relief Act without the sanction of the Charity Commissioners (w).

Trustee Relief Act.

And when they are so paid in, the Court may proceed to deal with them and direct a scheme without the sanction of the Commissioners (x).

The effect of payment into Court under the Trustee Relief Act is to relieve the trustees of liability and to put an end to their trusts (y).

Trustees cannot therefore obtain administration of charitable funds without the sanction of the Charity Commissioners by paying the fund into Court, and thus preventing a petition in regard to it. And they will be fixed with the costs of such an application (z).

It is provided by 14 & 15 Vict. c. 56, s. 2 (a), that all notices to the governors or members of or subscribers to any charitable institution in England, whether incorporated or not, by the charter, statutes, or rules required to be given, may be served through the post directed to the address given in the list of governors, members, or subscribers for the time being in use at the chief establishment of the institution; and evidence of the same being posted properly addressed is evidence of service. And no notice requires to be served upon a governor, member, or subscriber who is not within the United Kingdom.

Service of notices.

Power of Majority of Trustees.

As a general rule, in a public or charitable trust, a majority of trustees has power to bind the minority (b).

Majority of trustees may act.

(f) Charit. Trusts Act, 1853, s. 53, *post*. A mandamus may be granted for delivery up of the keys of a chest in which deeds are kept: *Reg. v. Abrahams*, 4 Q. B. 157.

(u) Charit. Trusts Amend. Act, 1855, s. 22, *post*.

(v) Charit. Trusts Act, 1869, s. 14, *post*.

(w) *Re St. Giles, &c. Volunteer Corps*, 25 Beav. 313; and see n. (a) to sect. 17 of the Charit. Trusts Act, 1853, *post*.

(x) *Re St. Giles, &c. Volunteer Corps*, *supra*.

(y) *Re Poplar and Blackwall Free School*, 8 Ch. D. 543, 546.

(z) *Ibid*.

(a) This Act is printed in App. I., *post*.
(b) *Younger v. Welham*, 3 Swanst. 180; *Grindley v. Barker*, 1 B. & P. 229; *Wilkinson v. Malin*, 2 Tyr. 544. As to acts of a corporation done in the absence of some of its members, see *Winne v. Bampton*, 3 Atk. at p. 475.

And this is all the more so if the instrument of foundation expressly directs new trustees to be appointed when the trustees have been reduced to a certain number; for that shows an intention that the continuing trustees, so long as they have not fallen below the specified number, shall act (c).

Conveyance,
&c.

Thus, a conveyance (d) or lease (e) granted by a majority of the surviving trustees, if not objectionable on any other ground, is good.

The Court, in making an order for sale, refused to authorize the trustees or any five of them to sell (f).

Not in con-
travention of
trusts.
Election of
minister, &c.

A majority of the trustees has, of course, no power to deal with the trust property in a way not authorized by the trusts (g).

Similarly, a majority of the trustees of an advowson (h) or dissenting chapel (i) may exercise the power of electing a minister or of dismissing him (j), and the minority are bound to do any acts required for giving effect to the decision of the majority, as, for instance, to join in presenting the elected vicar to the bishop (k), and may be restrained, by injunction at the suit of the majority, from preventing their decision from taking effect; as, for example, by taking possession of and locking up a chapel (l).

So, also, a schoolmaster may be appointed by a majority of the trustees (m).

Appointment
of new
trustees.

On the same principle, a power of appointing new trustees may usually be well exercised by the surviving trustees, although their number has been reduced below that upon which the instrument of foundation directs that a new appointment shall be made (n). The terms of the trust may, however, render it imperative to fill up a vacancy at once (o).

Charit. Trusts
Acts.

Under the Charitable Trusts Acts a majority of trustees have in many cases power to act on behalf of all; as, for instance, in carrying into effect a sale, exchange, partition, mortgage, lease, or other disposition of charity property (p), or in instituting legal

(c) *Re Coates to Parsons*, 34 Ch. D. at pp. 377, 378.

(d) *Doe v. Godwin*, 1 Dow. & Ry. K. B. 259.

(e) *Att.-Gen. v. Shearman*, 2 Beav. 104.

(f) *Re Congregational Church, Smethwick*, W. N. 1866, 196.

(g) *Ward v. Hipwell*, 3 Giff. 547.

(h) *Att.-Gen. v. Cuming*, 2 Y. & C. C. 139. See also *Att.-Gen. v. Scott*, 1 Ves. Sen. 413.

(i) *Att.-Gen. v. Lawson*, W. N. 1866, 343; and see *Att.-Gen. v. Bishop of Litchfield*, 5 Ves. 825; *Davis v. Jenkins*,

3 V. & B. at p. 159.

(j) *Perry v. Shipway*, 4 De G. & J. 353.

(k) *Att.-Gen. v. Cuming*, *supra*.

(l) See *Perry v. Shipway*, *supra*.

(m) *Wilkinson v. Malin*, 2 Tyr. 544; *Re Butterwick Free School*, 15 Jur. 913.

(n) *Att.-Gen. v. Floyer*, 2 Vern. 748; *Att.-Gen. v. Bishop of Litchfield*, 5 Ves. 825, 831; *Att.-Gen. v. Cuming*, 2 Y. & C. C. 139; and see *ante*, p. 178.

(o) *Foley v. Wontner*, 2 J. & W. at p. 246.

(p) Charit. Trusts Act, 1869, s. 12, *post*.

proceedings (q), subject, however, in most cases to the consent of the Charity Commissioners being obtained.

Where charity trustees are numerous, and the necessity for all of them to act in matters connected with the charity is productive of great inconvenience, the Court may sanction the adoption of a scheme by which, under proper restrictions, the powers may be exercised by a less number than the whole body (r).

Scheme may authorize some trustees to act for all.

Schemes made by the Charity Commissioners commonly provide that a certain number of the trustees shall form a quorum (s).

Quorum.

Powers.

The Court does not interfere with the exercise by the trustees of a discretionary power, unless it is exercised corruptly (t).

Discretionary power not interfered with.

So much is this so that where sums are directed to be applied by trustees to charitable purposes, and the distribution and the objects are left to their discretion, the Court usually declines to direct a scheme (u).

Discretionary power of distribution.

The trustees must, however, exercise their discretion with an absence of indirect motive, with honesty of intention, and with a fair consideration of the subject. But if the discretion is properly exercised, they are not bound to give any reason for the conclusion they adopt. The duty of the Court is confined to seeing that the discretion has been properly exercised (v).

Discretion must be properly exercised, but reasons need not be given.

Trustees of a charity were directed to select, out of certain parishes named, a lad to be brought up as a minister of the Church of England; and in the event of no suitable candidate being found in the specified parishes, then to select a lad from any other parish. On a vacancy occurring, the trustees chose a lad not of the specified parishes, and declared the election without stating any reasons for their choice. On a petition to set aside this election, it was held that the trustees were right in abstaining from the statement of any reasons for the selection they had made, and that, in the absence of proof that they had exercised their discretion otherwise

(q) *Ibid.* s. 13.

(r) *Re Beverley Charities*, 9 L. J. Ch. 91.

(s) See Scheme No. 1, Cl. 16, App. II., *post*.

(t) *Att.-Gen. v. Governors of Harrow School*, 2 Ves. Sen. 551; *Att.-Gen. v. Mossly*, 2 De G. & Sm. 398; cf. *Costabadie v. Costabadie*, 6 Hare, 410; *Att.-Gen. v. Boucherett*, 25 Beav. 116; *Re Hall's Charity*, 14 Beav. 115, where there was a gift for the reparation of a church, the reparation of a bridge, and other things needful within the parish at the discretion of the trustees, and it was held that the discretion applied only to

the third branch. The Charity Commissioners similarly insist that where the administration of a charity is in the discretion of the trustees, the selection of the beneficiaries rests with the trustees only, and that no person, unless admitted by the trustees, can claim, as of right, to participate.

(u) *Waldo v. Cayley*, 16 Ves. 206; *Horde v. Earl of Suffolk*, 2 My. & K. 59; *Powerscourt v. Powerscourt*, 1 Mol. 616; *Att.-Gen. v. Gaskell*, 9 L. J. O. S. Ch. 188; *Re Lea*, *Lea v. Cooke*, 34 Ch. D. 528; see further, *ante*, pp. 126, 127.

(v) *Re Beloved Wilkes' Charity*, 3 Mac. & G. 440.

than fairly and honestly, the Court had no jurisdiction to question the correctness of their decision. The petition was dismissed accordingly, the petitioners paying their own costs, and the costs of the trustees being paid out of the funds of the charity (*w*).

Improper
exercise of
discretion
controlled.

But the Court will control the discretion of the trustees if they act improperly (*x*).

In *Att.-Gen. v. Governors of Harrow School* (*y*) an information seeking the interference of the Court was not dismissed, Lord Hardwicke saying that, though he would not contradict the intent of the donor, which was to leave the matter to the discretion of the trustees, yet he would still keep a hand over them.

Where charity trustees had power to lease for three lives or thirty-one years, the Court expressed an opinion that it could control the exercise of the power if it appeared for the benefit of the charity that it should not be acted upon (*z*).

Decision may
be corrected
where reason
given.

Again if the trustees think fit to state a reason for their conclusion, the Court may consider the validity of the reason; and if it sees that it does not justify the decision, it may correct the decision accordingly (*a*).

Exercise of
discretion by
will.

Where a discretionary power of selection was given to a trustee, it was held to be duly exercised by definite directions in his will with regard to the matter. The interposition of the Crown by sign manual was therefore held to be excluded (*b*).

Discretionary
power, by
whom exer-
ciseable.

It is a question of construction by whom a discretionary power is exerciseable.

When not
exerciseable
by new
trustees.

Thus, where a testator directed his residuary estate to be disposed of in charity to such persons as the executors or the survivors of them should think fit, the power was held to be not exerciseable by a single survivor or by new trustees (*c*).

The ground of the decision was that the power was intended to be confined to the particular persons named as executors by the testator, and that his express directions as to the persons in whom he reposed his confidence could not be departed from.

Ex parte
Blackburne.

In *Ex parte Blackburne* (*d*), a testator named as trustees the occupiers of certain annual offices, and directed that the charitable objects should be selected by the trustees or the majority. Upon an appointment of new trustees by the Court, it was directed that

(*w*) *Re Beloved Wilkes' Charity*, 3 Mac. & G. 440. See also *Att.-Gen. v. Mosely*, 2 De G. & Sm. 399.

(*x*) *Att.-Gen. v. Glegg*, Amb. 584; *Waldo v. Cayley*, 16 Ves. 206, 212; *Att.-Gen. v. Sherborne Grammar School*, 18 Beav. 256; *Re Bedford Charity*, 5 Sim. 578. With regard generally to the effect of an administration decree upon the powers of trustees, see *Bethell v. Abra-*

ham, L. R. 17 Eq. 24.

(*y*) 2 Ves. Sen. 551.

(*z*) *Ex parte Berkhamstead Free School*, 2 V. & B. at p. 138.

(*a*) *Re Beloved Wilkes' Charity*, *supra*.

(*b*) *Copinger v. Crehane*, 11 Ir. R. Eq. 429.

(*c*) *Hibbard v. Lamb*, Amb. 309.

(*d*) 1 J. & W. 297.

the selection of objects should be left to the persons nominated by the testator.

If, on the other hand, it appears from the construction of the will that the power is intended to be exercisable by any person for the time being filling the office of trustee, or to whom the law would assign the duties of executor, then the power is exercisable by new trustees, whether appointed under a power contained in the will (e) or by the Court (f).

When exercisable by trustees for time being.

Residence in a place provided by a charitable institution so long as a person is supported and maintained at the expense of the institution, as an object of the charity, does not confer a settlement for the purpose of the poor law provisions (g).

Settlement not gained by residence in charitable institutions.

The Divided Parishes and Poor Law Amendment Act, 1876 (h), provides that nothing therein shall prejudice, vary, or affect any right, interest, or jurisdiction in or over any charitable endowment applicable for the benefit of a divided parish as defined by sect. 1 of that Act.

Charities excluded from operation of Divided Parishes Act.

Trustees or governors of charities, although restrained by the Charitable Trusts Act, 1853 (i), from commencing any "suit, petition, or other proceeding" without the sanction of the Charity Commissioners, are nevertheless at liberty to take, without such sanction, such proceedings against third persons as may be necessary for the proper protection and preservation of the charity estate.

Ejectment, recovery of rent, &c.

"It was not intended to prevent the trustees of a charity from bringing an action of ejectment against a tenant holding over, or an action of covenant against a tenant who would not pay his rent, or to prevent their taking proceedings by way of distress against a defaulting tenant, or to prevent their taking proceedings against a man who . . . never was properly appointed to an office, but will persist in retaining it, and in thrusting himself on the property of the charity as a trespasser" (j).

Thus they are at liberty to take proceedings for recovering arrears of rent (k).

Similarly an action of ejectment might always have been maintained against the minister of a chapel by the persons in whom the chapel was vested, for at law the minister is merely a tenant at will (l).

(e) See *Att.-Gen. v. Glegg*, Amb. 584; *Moggridge v. Thackwell*, 1 Ves. Jun. 464, 476. See Lewin on Trusts, 8th ed. pp. 604 *et seq.*; and *ante*, pp. 31, 32.

(f) See Conv. and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 33.

(g) 54 Geo. III. c. 170, s. 6.

(h) 39 & 40 Vict. c. 61, s. 9.

(i) Sect. 17, and notes thereto, *post*.

(j) Per James, L. J., in *Holme v. Guy*, 5 Ch. D. at p. 910.

(k) *Alexander v. Drevett*, 2 Times L. R. 782.

(l) *Doe v. Jones*, 10 B. & C. 718; *Doe v. M'Kaeg*, 5 Man. & Ry. 620; *Doe d. Kirschner v. Roe*, 7 Dowl. 97; *Doe d. Dickens v. Roe*, 7 Dowl. 121; *Doe d. Somers v. Roe*, 8 Dowl. 292; *Doe d.*

But this would be subject to any right of action which he might have against any person who improperly turned him out (*a*).

Official Trustees.

Official
trustees of
charity lands.

The official trustee of charity lands (*b*) in whom charity lands may be vested by the Court or the Charity Commissioners, holds such lands as a bare trustee, and the persons administering the charity have the possession, management, and control of the trust estates and the application of the income, as if the same had remained vested in them (*c*).

Official
trustees of
charitable
funds.

The duty of the official trustees of charitable funds (*d*), to whom stocks, shares, and funds belonging to a charity may be ordered to be transferred or paid (*e*), is to pay, without charge, the dividends and income to the trustees of, or persons administering the charity, or otherwise dispose thereof, and to transfer the stocks, shares, and securities (when occasion requires) as the Court or the Commissioners direct (*f*).

They are to keep a banking account at the Bank of England (*g*), and the mode of drawing on such account is provided for (*h*).

Principal moneys paid to them must be forthwith invested (*i*), and dividends and interest due to them must be placed to their banking account (*k*).

The keeping of the accounts of the official trustees of charitable funds, and their banking account, and generally the mode in which their business is conducted, are now governed by Treasury regulations made under sect. 4, sub-sect. (2) of the Charitable Trusts Act, 1887 (*l*).

Accounts of the official trustees are required to be laid before Parliament (*m*), and no official trustee is liable for loss unless caused by his own neglect (*n*).

Churchwardens and Overseers, Church Trustees, &c.

Charities
vested in vicar
and church-

Property is frequently found vested in the vicar and churchwardens of a parish, or the churchwardens and overseers, upon

Smith v. Roe, 8 Dowl. 509; *Doe d. Fishmongers' Co. v. Roe*, 2 Dowl. N. S. 689; and see *Doe v. Fletcher*, 8 B. & C. 25.

(*a*) *Doe v. Jones*, 10 B. & C. 718. Cf. *Newsome v. Flowers*, 10 W. R. 26; and see *ante*, pp. 215, 216.

(*b*) Charit. Trusts Act, 1853, s. 47, *post*; Charit. Trusts Amend. Act, 1855, s. 15, *post*. See also notes to sect. 48 of the Charit. Trusts Act, 1853.

(*c*) Charit. Trusts Act, 1853, s. 50, *post*; and see n. (*b*) thereto.

(*d*) Charit. Trusts Act, 1887, s. 4, sub-s. (1), *post*.

(*e*) See sect. 51 of Charit. Trusts Act, 1853, and notes thereto, *post*.

(*f*) Charit. Trusts Act, 1853, s. 52, *post*; and see Charit. Trusts Act, 1860, s. 2, *post*.

(*g*) Charit. Trusts Amend. Act, 1855, s. 20, *post*.

(*h*) *Ibid.* s. 21.

(*i*) *Ibid.* s. 23.

(*k*) *Ibid.* s. 24.

(*l*) *Post*; and see notes thereto.

(*m*) Charit. Trusts Act, 1860, s. 18, *post*.

(*n*) *Ibid.* s. 17.

trust, for various charitable purposes within the parish. These purposes may be classified thus: (1) the benefit of some particular class of poor persons, as poor widows or poor children; (2) the benefit of the poor of a parish to be distributed in a particular mode, as in providing coal or clothing; (3) the benefit of the poor of the parish generally; (4) the repair of a church (o). wardens, or churchwardens and overseers.

By 59 Geo. 3, c. 12, s. 17, it is enacted, "That all buildings, lands and hereditaments which shall be purchased, hired, or taken on lease by the churchwardens and overseers of the poor of any parish by the authority and for any of the purposes of this Act, shall be conveyed, demised, and assured to the churchwardens and overseers of the poor of any such parish respectively, and their successors in trust for the parish; and such churchwardens and overseers of the poor, and their successors, shall and may, and they are hereby empowered to accept, take, and hold, in the nature of a body corporate, for and on behalf of the parish, all such buildings, lands, and hereditaments, and also all other buildings, lands, and hereditaments belonging to such parish; and in all actions, suits, indictments, and other proceedings for or in relation to any such buildings, land, or hereditaments, or the rent thereof, or for or in relation to any other buildings, lands, or hereditaments belonging to such parish, or the rent thereof, and in all actions and proceedings upon or in relation to any bond to be given for the faithful execution of the office of an assistant overseer, it shall be sufficient to name the churchwardens and overseers of the poor for the time being, describing them as the churchwardens and overseers of the poor of the parish for which they shall act, and naming such parish; and no action, or suit, indictment, or other proceeding shall cease, abate, or be discontinued, quashed, defeated, or impeded by the death of the churchwardens and overseers named in such proceeding, or the deaths or death of any of them, or by their removal or the removal of any of them from or the expiration of their respective offices." 59 Geo. 3, c. 12, s. 17.

This section does not create the churchwardens and overseers a corporation for all intents and purposes, so as to give them all the common law incidents of a corporation (p); it merely provides that they shall hold property in the nature of a body corporate by what has been called a "parliamentary succession" (q). Nature of corporation created by section.

(o) *Att.-Gen. v. Leage*, Times, 13 Dec., 1881.

(p) *Smith v. Adkins*, 8 M. & W. 362; *Gouldsworth v. Knights*, 11 M. & W. 337.

(q) See *Johnson v. Hodgson*, 8 East,

38. A demise to churchwardens and overseers need not be executed by them: *Smith v. Adkins*, *supra*. The proper way for the churchwardens and overseers, who have no common seal, to execute a deed would, no doubt, be for

Church-wardens and overseers must be separate.

In order to constitute the body corporate intended by the Act, there must be two overseers and a churchwarden or churchwardens. Where there were two overseers, one of whom was afterwards appointed (by custom) sole churchwarden, the Act did not vest the property in them (*r*).

Retrospective operation.

The words in the section "and also all other buildings, lands, and hereditaments belonging to the parish," are retrospective (*s*).

Property to which section applies.

Freeholds (*t*) and leaseholds (*u*), but not copyholds (*x*), are within the section.

Land held for benefit of parish.

Freeholds or leaseholds held generally for the benefit of the parish, or the poor of the parish, are lands "belonging to the parish" within the section (*y*).

Thus, land given in 1624 to the poor of a parish to be distributed by the churchwardens for the time being, was held within the section (*z*). So, also, a lease of land to a committee for a parish to be used as a poor house, the rent of which was always paid by the churchwardens and overseers (*a*).

Lands applicable for purposes of church rate.

Lands, the rents and profits of which are applicable to the purposes of a church rate, as where they are made applicable for the repair of the parish church (*b*), are also lands "belonging to the parish" within the Act (*c*).

And the fact that a lease had formerly been granted by the churchwardens, and the rent reserved to them and their successors, and that the property was described in the lease as "belonging to the parish church," was sufficient to show that the land was parish land (*d*).

Special trusts.

The section does not apply to property held upon special trusts, where "the trusts, either wholly or in part, are such as limit the discretion of the trustees, confine them to special objects, or special

each churchwarden and overseer to execute it separately. In *Ex parte Annesley*, 2 Y. & C. Ex. 350, doubt was felt whether the churchwardens and overseers having no common seal could execute a power of attorney so as to bind their successors. See also *Ward v. Clarke*, 12 M. & W. 747.

(*r*) *Woodcock v. Gibson*, 4 B. & C. 462. Cf. *Uthwatt v. Elkins*, 13 M. & W. 772.

(*s*) With regard to first part of the section, which is prospective, it has been held that the fact that the persons to whom land is demised were acting as churchwardens and overseers at the time of the demise, is *prima facie* proof that they held the office: *Doe v. Barnes*, 8 Q. B. 1037. See *Doe v. Foster*, 3 C. B. 215.

(*t*) See cases cited *infra*.

(*u*) *Alderman v. Neate*, 4 M. & W. 704. See also *Doe v. Overseers, Geo. of Rugeley*, 7 Q. B. 107.

(*x*) *Att.-Gen. v. Lowin*, 8 Sim. at p. 370; *Re Paddington Charities*, *ibid.* 629; *Att.-Gen. v. Anon.*, cited 2 Y. & C. Ex. 352, n.

(*y*) *Ex parte Annesley*, 2 Y. & C. Ex. 350; *Doe v. Billett*, 7 Q. B. 976; *Re Paddington Charities*, *supra*.

(*z*) *Re Hackney Charities*, 34 L. J. Ch. 169.

(*a*) *Alderman v. Neate*, *supra*; *Doe v. Overseers, Geo. of Rugeley*, *supra*.

(*b*) *Gouldscroth v. Knights*, 11 M. & W. 337; *Rumball v. Munt*, 8 Q. B. 382.

(*c*) *Doe v. Hiley*, 10 B. & C. 885. See *Allason v. Stark*, 9 A. & E. at p. 287.

(*d*) *Doe v. Terry*, 4 A. & E. 274; *Doe v. Cockell*, 4 A. & E. 478.

modes of relief, the latter being such as could not properly fall on the general parochial fund if there was no such charitable fund”(e).

Thus, where the objects of the trust were (among others) the binding of one poor boy apprentice in each year and instructing the poor of the parish, the Act was held not to apply (f). So, also, where the object of the charity is the distribution of bread or doles among the poor of the parish (g).

The case is the same where the trusts are partly for the general benefit of the poor and partly for a special purpose (h). Trusts partly special.

But where the gift is for the benefit of the poor generally, the mere fact that persons receiving relief from the poor rate are not proper objects of the charity cannot take the case out of the Act (i). Fact that persons receiving relief from the poor rate are not proper objects of the charity cannot take the case out of the Act (i).

The section applies in all cases in which, the property not being held upon special trusts, the whereabouts of the legal estate is unknown or uncertain, as where the origin of the charity is lost in obscurity (k), or where, although the property was originally vested in trustees, the devolution of the legal estate is doubtful (l). Section applies where doubtful in whom legal estate vested.

Where, however, the property is vested in known existing trustees, the section does not operate to transfer it to the churchwardens and overseers. The reason is that it contains no divesting provision (m). Not where vested in known existing trustees.

On the last point, however, the decisions, which have not been uniform, require consideration. Decisions not uniform.

In *Doe v. Hiley* (n) it was not known in whom the legal estate was vested, and the judgment of the Court was directed solely to that state of facts. It must, however, be admitted that Lord Tenterden, in giving judgment, used language wide enough to cover the case of property vested in known existing trustees. Doe v. Hiley.

In *Ex parte Annesley* (o) the estates were vested in existing feoffees in trust for parish purposes, and Lord Abinger, professing to follow *Doe v. Hiley* (p), said that the charity estates were taken out of the feoffees by the Act and vested in the churchwardens and overseers. Ex parte Annesley.

Again, in *Doe v. Billett* (q), the property was vested in the mayor Doe v. Billett.

(e) *Churchwardens, &c. of St. Nicholas, Deptford v. Sketchley*, 8 Q. B. 394, 404, per Lord Denman.

(f) *Att.-Gen. v. Lewin*, 8 Sim. 366. And see *Allason v. Stark*, 9 A. & E. 256.

(g) *Re Paddington Charities*, 8 Sim. 629; *Allason v. Stark*, *supra*; *Re Hackney Charities*, 34 L. J. Ch. 169.

(h) *Allason v. Stark*, *supra*.

(i) *Churchwardens, &c. of St. Nicholas, Deptford v. Sketchley*, *supra*, at p. 405.

(k) *Doe v. Terry*, 4 A. & E. 274.

(l) *Doe v. Hiley*, 10 B. & C. 885; *Churchwardens, &c. of St. Nicholas, Deptford v. Sketchley*, *supra*, at p. 409.

(m) *Churchwardens, &c. of St. Nicholas, Deptford v. Sketchley*, *supra*.

(n) *Supra*.

(o) 2 Y. & C. Ex. 350. In *Gouldsworth v. Knights*, 11 M. & W. 337, the estates were also vested in existing trustees.

(p) *Supra*.

(q) 7 Q. B. 976.

and corporation of the borough and the churchwardens jointly, but the mayor and corporation were trustees only for the parish, and it was held that the section had transferred it to the churchwardens and overseers.

It may be said, therefore, with regard to these cases, that if and so far as they decided that the Act divested land from existing trustees, they merely professed to follow *Doe v. Hiley*, and proceeded on the assumption that that was what that case in fact decided.

Rumball v. Munt.

The next case was *Rumball v. Munt* (r). There the Court of Queen's Bench expressly held that property vested in known existing trustees was transferred by the section to the churchwardens and overseers.

St. Nicholas, Deptford v. Sketchley.

That case was followed a year later by *Churchwardens of St. Nicholas, Deptford v. Sketchley* (s), in which the same Court, in a carefully considered judgment, held that, inasmuch as the section contains no express divesting words, it has no application to cases where there are known existing trustees in whom the legal estate is clearly vested. And the Court reviewed the earlier decisions and expressly recorded its opinion that its own previous decision in *Rumball v. Munt* (t) had been erroneous.

"It is a safe rule," said Lord Denman (u), "to require that in order to divest an estate there should be either express words or necessary implication: to avoid such interference with existing legal interests a more narrow construction than the words in themselves might admit of is properly to be adopted. . . . It is not unreasonable in itself to say that property so circumstanced does not belong to the parish."

Re Hackney Charities.

The only subsequent decision has been the case of *Re Hackney Charities* (v). There land was conveyed in 1671 to trustees upon trust to permit the churchwardens to receive the rents and dispose thereof for the relief of the poor of the parish; and Lord Romilly said, "The property was conveyed to trustees in trust for the benefit of the poor of the parish. In these cases I am of opinion that the legal estate was vested in the churchwardens and overseers as a corporation." The decision was reversed on a ground which rendered it unnecessary for the Court of Appeal to consider this particular point.

It does not appear from the report of *Re Hackney Charities* whether the trustees were known or not. If they were not, the case is consistent with *Churchwardens, &c. of St. Nicholas, Dept-*

(r) 8 Q. B. 382.

(s) 8 Q. B. 394.

(t) *Supra*.

(u) At pp. 408, 409.

(v) 34 L. J. Ch. 169.

ford v. Sketchley. Again, the M. R. professed to be following *Doe v. Hiley*, and although the case of *Rumball v. Munt* was called to his attention, the case of *Churchwardens, &c. of St. Nicholas, Deptford v. Sketchley* was not.

The result seems to be that nothing has occurred to displace the authority of *Churchwardens, &c. of St. Nicholas, Deptford v. Sketchley*, and that case would no doubt be followed. Result of decisions.

Where land is vested in the churchwardens and overseers under this section their consent is necessary to a transfer by order of the Court or the Charity Commissioners to the official trustee of charity lands (x). Transfer to official trustee.

The Compulsory Church Rate Abolition Act, 1868 (y), provides as follows (z): Church trustees.

“ A body of trustees may be appointed in any parish for the purpose of accepting, by bequest, donation, contract, or otherwise, and of holding any contributions which may be given to them for ecclesiastical purposes in the parish.

“ The trustees shall consist of the incumbent and of two householders or owners or occupiers of land in the parish, to be chosen in the first instance, and also from time to time on any vacancy in the office by death, incapacity, or resignation, one by the patron and the other by the bishop of the diocese in which the parish is situate.

“ The trustees shall be a body corporate by the name of the church trustees of the parish to which they belong, having a perpetual succession and a common seal, with power to sue and be sued in their corporate name.

“ The trustees may from time to time, as circumstances may require, pay over to the churchwardens, to be applied by them either to the general ecclesiastical purposes of the parish, or to any specific ecclesiastical purposes of the parish, any funds in their hands, and the funds so paid over may be applied to such purposes, and shall not be applied to any other purpose: Provided always, that no power shall be thereby conferred on the churchwardens to take order with regard to the ecclesiastical purposes of the parish further or otherwise than they are now by law entitled to do: Provided also, that due regard shall be had to the directions of the donors of funds contributed for any special ecclesiastical purposes; and, subject as aforesaid,

“ The trustees may invest in Government or real securities any funds in their hands, and accumulate the income thereof or other-

(x) Charit. Trusts Act, 1853, s. 48, (y) 31 & 32 Vict. c. 109.
post; *Re Hackney Charities*, 34 L. J. Ch. (z) Sect. 9.
 169, 175.

wise deal with such funds as they think expedient, subject to the provisions of this Act.

"The incumbent shall be the chairman of the trustees.

"The trustees shall once at the least in every year lay before the vestry an account of their receipts and expenditure during the preceding year, and of the mode in which such receipts have been derived, and expenditure incurred, together with a statement of the amount, if any, of funds remaining in their hands at the date of such account."

School board.

By the Elementary Education Act, 1873 (*a*), s. 13, it is enacted that a school board shall be able, and be deemed always to have been able, to be constituted trustees for any educational endowment or charity for purposes connected with education, whether such endowment or charity was established before or after the passing of the principal Act (*b*); and to have and always to have had power to accept any real or personal property given to them as an educational endowment or upon trust for any purposes connected with education, except that they cannot accept any educational endowment, charity, or trust inconsistent with the principles upon which school boards are required to conduct their schools. Schools connected with such endowment, charity, or trust are deemed schools provided by the school board. But nothing in the section is to affect the law of mortmain or 9 Geo. II. c. 36 (*c*).

Retainer and Conversion of Trust Funds.

Retainer of charity funds.

It is an obvious breach of trust for the trustees to retain the charity funds in their hands without applying them to the purposes for which under the trusts they are applicable (*d*).

Neglect to pay rent-charge.

Thus a person whose land is subject to a rent-charge in favour of a charity commits a breach of trust if he ceases to pay the rent (*e*).

Failure of charitable object.

And it makes no difference that the particular charitable object to which the fund was appropriated has failed (*f*), or that there is no hand to receive it (*g*); for where property has once been impressed with a charitable trust the trust can never come to an end, even though the charitable purpose ceases to be practicable.

Where a rent-charge was granted to a society to be applied for the maintenance of a school, and through want of funds the school

(*a*) 36 & 37 Vict. c. 86.

(*b*) Elem. Educ. Act, 1870, 33 & 34 Vict. c. 75.

(*c*) Now Parts I. and II. of the Mortm. and Charit. Uses Act, 1888, *post*.

(*d*) Duke, 116; *Att.-Gen. v. Corporation of Cambridge*, 5 L. J. Ch. 357.

(*e*) *Kennington Hastings' Case*, Duke, 71; *Aylet v. Dodd*, 2 Atk. 238; *Att.-*

Gen. v. Bolton, 3 Anstr. 820; *Incorporated Society v. Price*, 1 J. & Lat. 498; *Att.-Gen. v. Gascoigne*, 2 My. & K. 647, 651; *Att.-Gen. v. West*, 5 Jur. N. S. 77. See also *Commissioners of Charit. Donations v. Wybrants*, 2 J. & Lat. 182.

(*f*) *Incorporated Society v. Price*, *supra*.

(*g*) *Aylet v. Dodd*, 2 Atk. 238.

was discontinued, Sugden, L. C., said: "There is no pretence for saying that it (the rent-charge) has ceased by reason of the school having been discontinued. Suppose the school-house had been burned down by accident, could it be contended that the rent-charge ceased until the house was rebuilt?" (i).

So, also, where the payment is for the maintenance of alms-people answering a certain description, the land charged with such payment is not discharged, although there are not sufficient persons in the parish answering the required description (k).

Similarly, it is a breach of trust to conceal the existence of the trust by not communicating it to parties interested (l). Concealment of trust.

Nor can trustees convert the funds to other purposes than those marked out by the instrument of foundation or the scheme regulating the charity. And although a *cy-près* application may be desirable, it is not for the trustees to make that application on their own authority (m). Conversion to improper purposes.

Where the gift is for the poor of one parish, it is a breach of trust to apply it in such a way that the poor of another parish have the benefit of it (n). Parochial charities.

And where several parochial charities are given for several purposes, no agreement of the parishioners can divert them to other uses (o).

A fund directed to be applied in specific ways for the benefit of a town cannot be applied to other purposes of general utility (p). Nor could an estate given for the maintenance of decayed householders be applied for the poor of the parish generally (q).

In *Att.-Gen. v. Leage* (r), it was held that a stipend of 120*l.* under an Act of Parliament "to be raised within the district," and paid to the rector in lieu of burial fees, was not payable out of charitable funds vested in the parish authorities upon trust for the poor generally or for a particular class of poor, or for the repair of the church, but only out of such moneys as the whole parish was beneficially entitled to for its public purposes. Rector's stipend not payable out of charity for benefit of poor.

Similarly, it is a breach of trust for trustees of several charities Funds of one charity can-

(i) *Incorporated Society v. Price*, 1 J. & Lat. 499.

(k) *Aylet v. Dodd*, 2 Atk. 238.

(l) *Att.-Gen. v. Alford*, 4 De G. M. & G. 843, 852. In this case an executor who had retained the trust funds in his hands uninvested, but had made no profit by his misconduct, was held to be chargeable only with simple interest at 4 per cent. per annum.

(m) See *Att.-Gen. v. Kell*, 2 Beav. 575; *Att.-Gen. v. Coopers' Co.*, 19 Ves.

187; *Att.-Gen. v. Fivian*, 1 Russ. at p. 237; *Ward v. Hipwell*, 3 Giff. 547; *Re Campden Charities*, 18 Ch. D. at pp. 328, 329.

(n) *Att.-Gen. v. Brandreth*, 1 Y. & C. C. C. 200.

(o) *Man v. Ballet*, 1 Vern. 43.

(p) *Att.-Gen. v. Mayor, &c., of Dartmouth*, 48 L. T. N. S. 933.

(q) *Ex parte Fowler*, 1 J. & W. 70.

(r) App. III., post.

not be applied to another. to apply the funds of one to the objects of another (s). Otherwise, of course, where one fund is given for several institutions (t).

Subscription to school in return for admission of boys. Where a charity was for the support of a guild and its poor brethren, it was held to be no misapplication to subscribe out of the funds towards the erection of buildings in connection with a charity school in return for a right to have a certain number of boys educated and maintained gratuitously (u).

Grammar school. Where a school is established as a grammar school for instruction in the classics, the trustees cannot convert it into a school for teaching merely English, writing, and arithmetic (x). Nor can they apply the revenues in enlarging the school chapel for the benefit of the inhabitants of the town (y).

Gift to provide preacher. If the gift is to provide a preacher in one parish, it is a breach of trust to provide a preacher in another parish. If the gift is to find a preacher, it is a breach of trust to apply it to the poor (z).

Repair of church. Where the trusts of a charity are for the repair of one church, it is improper to apply the funds for the benefit of another church (a); or to mix them up with the produce of parochial rates and out of the general fund to defray the cost of repairing the church and other parochial expenses (b).

Pulling down chapel. In *Ex parte Greenhouse* (c), where the trustees of a chapel had pulled down the chapel, sold the materials, and converted a burying-ground to other uses, Plumer, V.-C., said that it was "the grossest and most indecorous breach of trust, by violating the burial-ground and pulling down the chapel without any authority or sanction . . . The bell is carried to the market place, and the pews to the parish church, and the stones of the church are used in repairs of a bridge. It is an enormous breach of trust, and such as could not be expected in a Christian country."

Religious restriction. We have seen that sometimes the benefits of a charity are restricted to persons holding a particular form of religious belief (d). Where this is so, it is a breach of trust to extend the benefit of the charity to persons not possessing the qualification (e).

Charity for members of Church of England. Thus, if it appear that only persons belonging to the Church of England are intended to be objects of the charity, it must not be extended to members of Dissenting sects (f).

(s) *Att.-Gen. v. Corporation of Newbury*, C. P. Coop. 72, 77; *Andrews v. M'Guffog*, 11 App. Cas. 313.

(t) *Att.-Gen. v. Geary*, 3 Mer. 514.

(u) *Anderson v. Wrights of Glasgow*, 12 L. T. N. S. 805.

(x) *Att.-Gen. v. Earl of Mansfield*, 2 Russ. 501. See *ante*, pp. 162 *et seq.*

(y) *Att.-Gen. v. Earl of Mansfield*, *supra*.

(z) *Duke*, 116. See *Wivelscom Case*, *Duke*, 94; *Att.-Gen. v. Goldsmiths' Co.*,

C. P. Coop. at p. 309.

(a) *Re St. John the Evangelist*, 4 Times L. R. 765. See *Re Church Estate Charity, Wandsworth*, L. R. 6 Ch. 296.

(b) *Att.-Gen. v. Vivian*, 1 Russ. 226.

(c) 1 Madd. 109, reversed 1 Bli. N. S. 17, on technical grounds.

(d) *Ante*, p. 116.

(e) *Shore v. Wilson*, 9 Cl. & F. 355, stated *ante*, pp. 117, 118.

(f) *Per Romilly, M. R.*, in *Att.-Gen.*

If, on the other hand, the objects of the trust are Protestant Dissenters. Dissenters, none but Protestant Dissenters can partake in the benefit of them (g).

Similarly, where persons not believing in the doctrines of the Trinitarians. Trinity and Original Sin were intended to be excluded from participation in the charity, it was held that it was wrongly applied for the benefit of Unitarians (h).

Even if the charity is not established for a purpose purely religious, yet if an intention is expressed that only persons professing a particular form of belief shall be objects of it, that intention will be enforced. Charity not purely religious.

If, for example, the charity is established for providing secular education, but an intention is expressed that religious instruction of a particular character shall form part of the instruction given, the Court will follow that direction, though the effect may be to exclude a large portion of the community most in need of the charity from deriving any benefit from it (i); and the same may be the case although the primary object of the charity is eleemosynary (k).

Where a chapel is established for the observance of a particular form of religious worship it is a breach of trust to convert it to any other form of worship (l). Dissenting chapels.

Nor can it be so converted even though the trustees and the entire congregation consent, still less where there are dissentients (m). Consent of trustees and congregation.

"If . . . the institution was established for the express purpose of such form of religious worship or the teaching of such particular doctrines as the founder has thought most conformable to the principles of the Christian religion, I do not apprehend that it is in the power of individuals having the management of that institution, at any time to alter the purpose for which it was founded, or to say to the remaining members, 'We have changed our opinions; and you, who assemble in this place for the purpose of hearing the doctrines and joining in the worship prescribed by the founder, shall no longer enjoy the benefit he intended for you, Rule stated by Lord Eldon.

v. *Calvert*, 23 Beav. at p. 255. See *Att.-Gen. v. Pearson*, 3 Mer. at p. 409.

(g) *Att.-Gen. v. Murdoch*, 7 Hare, 445.

(h) *Shore v. Wilson*, 9 Cl. & F. 355; *Drummond v. Att.-Gen.*, 2 H. L. C. 837.

(i) *Att.-Gen. v. Calvert*, 23 Beav. 248, 257, per Lord Romilly.

(k) *Att.-Gen. v. Calvert*, *supra*, at p. 258. See *Shore v. Wilson*, *supra*.

(l) *Broom v. Summers*, 11 Sim. 353; *Dill*

v. *Watson*, 2 Jones' Ex. R. 49; *Att.-Gen. v. Welsh*, 4 Hare, 572; *Att.-Gen. v. Munro*, 2 De G. & Sm. 122; *Att.-Gen. v. Murdoch*, 7 Hare, 445; *Craigdallie v. Aikman*, 1 Dow, 1; and see *ante*, pp. 117 et seq.

(m) *Att.-Gen. v. Aust*, 13 L. T. N. S. 235; *Broom v. Summers*, *supra*; *Att.-Gen. v. Welsh*, *supra*; *Att.-Gen. v. Murdoch*, 1 De G. M. & G. at p. 114; *Ward v. Hipwell*, 3 Giff. 547; *Att.-Gen. v. Anderson*, 57 L. J. Ch. 543.

unless you conform to the alteration which has taken place in our opinions.' In such a case, therefore, . . . where a congregation become dissentient among themselves, the nature of the original institution must alone be looked to, as the guide for the decision of the Court; and that to refer to any other criterion—as to the sense of the existing majority—would be to make a new institution, which is altogether beyond the reach, and inconsistent with the duties and character, of this Court" (n).

Presbyterians. Thus, a chapel established for the doctrines of the Established Church of Scotland could not be converted to the use of members of the Free Church (o).

And where a chapel was established for Protestant Dissenters of the Presbyterian or Independent denominations, it could not be transferred to the Presbyterian Church of England (p). In that case, the trust being expressed to be for Presbyterians or Independents, both were held to be objects of the charity (q).

Particular Baptists.

Where, however, a chapel was established "for the use and benefit of a congregation of Particular Baptists," it was held that Baptists accepting the doctrine of free communion were proper objects, on the ground that that was not one of the fundamental doctrines of Particular Baptists, but that Baptists were divided with regard to it, and each congregation regulated its own practice (r).

Trustees cannot determine what doctrines required.

It is not, however, for the trustees to determine whether the existing congregation hold the doctrines required to entitle them to the benefit of the charity or not, or to take steps to eject them on the ground that they do not hold the proper doctrines. That is a question for the Court (s).

Acquiescence.

And if the trustees have for a long series of years recognized the title of their *cestuis que trust*, they cannot turn round and refuse to do so any longer (t).

Acquiescence by minority of congregation.

In the same way the dissentient minority of a congregation may become bound by acquiescence.

Thus, where the majority of the congregation, including the minister, joined another dissenting body which was considered to hold the same doctrines, it was held that a small minority of the original congregation, who had raised no opposition at the time,

(n) Per Lord Eldon in *Att.-Gen. v. Pearson*, 3 Mer. at p. 400; see also pp. 418, 419.

(o) *Craigdallie v. Aikman*, 1 Dow, 1; *Att.-Gen. v. Welsh*, 4 Hare, 572; *Att.-Gen. v. Munro*, 2 Do G. & Sm. 122; *Att.-Gen. v. Murdoch*, 7 Hare, 445. See, however, *Westwood v. McKie*, 21 L. T. N. S. 165; and cf. *Att.-Gen. v. Wilson*,

16 Sim. 210; *Cairncross v. Lorimer*, 3 Macq. 827.

(p) *Att.-Gen. v. Anderson*, 57 L. J. Ch. 543.

(q) *Ibid.*

(r) *Att.-Gen. v. Gould*, 28 Beav. 485; *Att.-Gen. v. Etheridge*, 11 W. R. 199.

(s) *Newsome v. Flowers*, 10 W. R. 26.

(t) *Ibid.*

could not, after the lapse of more than three years, maintain a suit to have it declared that the chapel was to be held for the use of those only who adhered to the original doctrine (u).

Although power may be expressly given to the majority of a congregation to make new laws or alter old ones, yet such power does not extend to enable the majority to alter the fundamental trusts, but only to vary the laws and make new ones, so far as may be consistent with the primary trusts (x).

Express power to alter laws.

In all matters, however, not involving an interference with the trusts, there is nothing to prevent the congregation from effecting any changes they choose.

Matters not involving interference with trusts.

In *Att.-Gen. v. Murdoch* (y), Knight Bruce, L. J., laid down the principle that it was competent to a congregation of Dissenters, acting unanimously, and with the concurrence, where they had trustees, of those trustees, from time to time to introduce into their system and constitution new regulations, regulations at least not in contravention of the deed of trust or of the foundation, and not subversive of or opposed in principle to the original system or constitution.

If, therefore, it is no part of the essence of the trust that a particular doctrine should be inculcated, the majority of the members may alter the usage of the congregation with respect to it.

Doctrines not fundamental.

Thus, where the trusts of a chapel were for a congregation of Particular Baptists, and it appeared that among Particular Baptists the doctrines of strict and free communion were both admitted, it was held that the majority of members might, notwithstanding long contrary usage, adopt strict or free communion, as they should from time to time determine (z).

So, also, the majority may make decisions as to the interior regulations of the chapel (a).

Interior regulations of chapel.

SECTION II.

ALIENATION OF CHARITY PROPERTY.

Although the presumption is that land devoted to charitable purposes is intended to remain so devoted, there is no positive rule

Alienation of charity property.

(u) *Cairncross v. Lorimer*, 3 Macq. 827. This would not, however, affect the Attorney-General's right to protect the charity: *Corporation of Newcastle v. Att.-Gen.*, 12 Cl. & F. 402.

(x) *Milligan v. Mitchell*, 3 My. & C. at pp. 74, 83.

(y) 1 De G. M. & G. at p. 114.

(z) *Att.-Gen. v. Gould*, 28 Beav. 485. See also *Att.-Gen. v. Etheridge*, 11 W. R. 199.

(a) *Att.-Gen. v. Anderson*, 57 L. J. Ch. at p. 549.

of law forbidding the alienation of charity property either absolutely or for a term of years (c).

Power of
Court to
alien.

The Court of Chancery always had power, under its general jurisdiction to administer the estate of a charity, to alien charity property upon information (d).

It also had similar jurisdiction under Romilly's Act (e).

The same powers are consequently now possessed by the High Court of Justice (f).

No consent on the part of the Charity Commissioners to the exercise of these powers is required, although in most cases their consent to the institution of the proceedings in which the sale is obtained is necessary (g).

Charity Com-
missioners.

The Charity Commissioners, as will be seen hereafter (h), have large powers with regard to the alienation of charity property.

Sales.

Sale ordered
by Court
where ben-
eficial.

Where it appears beneficial to the charity, a sale of charity property will be ordered by the Court (i).

Thus, where a house, the property of a charity, had fallen into disrepair and become unproductive, and the charity had no funds to repair it, a sale was ordered (k).

Removal of
site.

So the Court, where it appeared beneficial, authorized the sale of a school in the middle of a town, and the purchase of a fresh site in the neighbouring county (l).

Good case for
sale must be
made out.

But a sale is not directed unless a good case is made out (m); and it has been said that a sale of charity lands can rarely be justified (n).

Inquiry.

An inquiry may be directed whether a proposed sale is for the benefit of the charity (o).

(c) *Att.-Gen. v. Warren*, 2 Swanst. at p. 302; *Att.-Gen. v. Hungerford*, 2 Cl. & F. at p. 374; *President, &c., of Magdalen Coll., Oxford v. Att.-Gen.*, 6 H. L. C. at p. 205; *Att.-Gen. v. Pilgrim*, 12 Beav. 57; *Att.-Gen. v. Davey*, 19 Beav. at p. 525.

(d) *Re Ashton Charity*, 22 Beav. 288.

(e) 52 Geo. III. c. 101. *Re Parke's Charity*, 12 Sim. 329; *Re North Shields Old Meeting House*, 7 W. R. 541; *Re Overseers of Ecclesall*, 16 Beav. 297; *Re Ashton Charity*, *supra*; *Re Congregational Church, Smethwick*, W. N. 1866, 196; *contra*, *Re Lyford's Charity*, cited 16 Beav. 297, n.; *Re Suir Island Female Charity School*, 3 J. & Lat. 171; and see *post*, p. 331, and cases there cited.

(f) *Jud. Act*, 1873, s. 16. The execution of charitable trusts is specially

assigned to the Chancery Division: *ibid.* s. 34.

(g) *Charit. Trusts Act*, 1853, s. 17, and notes thereto, *post*.

(h) *Post*, pp. 253, 255.

(i) *Re Parke's Charity*, *supra*; *Re North Shields Old Meeting House*, *supra*; *Re Overseers of Ecclesall*, *supra*; *Re Ashton Charity*, *supra*.

(k) *Anon.*, cited 2 Swanst. 300, following an unreported decision cited *ibid.*

(l) *Re Colston's Hospital*, 27 Beav. 16.

(m) *Att.-Gen. v. Buller*, Jac. at p. 412; *Att.-Gen. v. Mayor of Newark*, 1 Hare, 395.

(n) *President, &c. of Magdalen Coll., Oxford v. Att.-Gen.*, 6 H. L. C. at p. 205.

(o) *Re Parke's Charity*, 12 Sim. at p. 332.

Charity trustees also might, in some cases, where alienation was beneficial to the charity, even in the absence of an express power of sale, alienate charity property (*p*). Sales by charity trustees.

And in *Att.-Gen. v. Hungerford* (*q*) Lord Brougham went so far as to put a case in which he conceived that alienation was so obviously beneficial that the trustees could not do their duty to the charity without alienating; and he said that in such a case an information might well lie against the trustees to compel them to alienate.

But a sale of charity property by trustees alone was safe neither for the trustees nor for the purchaser. And, with reference to the observations of Lord Brougham above mentioned, Lord St. Leonards has remarked that they "were not necessary for the decision of the case before the House, and it would be unsafe to act upon them; no prudent trustees of a charity would venture to sell, and, of course, no prudent purchaser would accept a conveyance from them. The power of the Court depends upon a different principle" (*r*). Sale by trustees unsafe.

Wherever charity property is alienated by the trustees on their own authority, the onus of proving that the transaction was proper is upon the persons dealing with the trustees; and if they fail to discharge that onus, the transaction will be set aside (*s*). Onus on purchaser to show transaction proper.

Trustees have been held entitled to remove the site of a college in a case where its establishment in a particular town was not the primary object of the charity (*t*). Removal of site by trustees.

It need scarcely be said that a conveyance by charity trustees, which would have the effect of defeating wholly or in part the objects of the charity, would be a breach of trust (*u*). Conveyance defeating objects of charity.

Where the origin of a charity does not appear, and a sale has taken place at a very distant date, and has since been acquiesced in, those facts may afford ground to presume that there was Power to sell presumed.

(*p*) *Att.-Gen. v. Warren*, 2 Swanst. at p. 302; *Att.-Gen. v. South Sea Co.*, 4 Beav. 453. With regard to the restrictions placed on the powers of trustees by the Charit. Trusts Acts, see *post*, p. 263. The trustees are entitled to insist on executing a conveyance when that is necessary for the purpose of transferring the legal estate, and the fact that the land was purchased by a local authority for a street, and that when the street was made it would vest in them under sect. 149 of the Public Health Act, 1875, was not sufficient: *Re Great Hospital*, *Norwich Times*, 12 Aug., 1885.

(*q*) 2 Cl. & F. at pp. 374, 375.

(*r*) Sugd. Law of Property, 535. See *Corporation of Newcastle v. Att.-Gen.*, 12 Cl. & F. 410; *Att.-Gen. v. Brettingham*, 3 Beav. 91; *Att.-Gen. v. Corporation of Newark*, 1 Hare, 395; *President, &c. of Magdalen Coll., Oxford v. Att.-Gen.*, 6 H. L. C. 189.

(*s*) *Att.-Gen. v. Brettingham*, 3 Beav. 91. See *post*, p. 289.

(*t*) *Re Manchester New College*, 16 Beav. 610. See also *Re Colston's Hospital*, 27 Beav. 16.

(*u*) *Att.-Gen. v. Kell*, 2 Beav. 575; *Att.-Gen. v. Bishop of Manchester*, L. R. 3 Eq. 436.

originally power to sell. Such a presumption, where circumstances warrant it, may reasonably be made in favour of long enjoyment (*v*).

Charitable corporations.

It seems doubtful whether, independently of statutory authority, a charity corporation can sell land (*x*). But corporations, as much as individuals, are within the Charitable Trusts Acts (*y*).

A sale by a hospital to a municipal corporation intimately connected with it, and composed to a great extent of the same persons, was held to be improper, and was set aside (*z*).

Charitable Trustees Incorporation Act, 1872.

By the Charitable Trustees Incorporation Act, 1872 (*a*), trustees of charities for religious, educational, literary, scientific, or public charitable purposes, obtaining a certificate of incorporation under that Act, may sue and be sued in their corporate name, and may hold and acquire, notwithstanding the Statutes of Mortmain, and convey, assign, and demise any present or future property belonging to the charity, but only to the same extent as they might have done if they had not become incorporated.

Sale of advowson.

Where part of the endowment of a school consisted of an advowson, it was held that if the parish were within a reasonable distance and the duties light, the living might properly be held by the master or usher. But that not being the case, it was ordered to be sold for the benefit of the school (*b*).

Presentation.

It seems, however, that where an advowson is given to a charity, the Court will not allow the trustees to present without making such profit out of the presentation as the law permits (*c*).

19 & 20 Vict. c. 50.

Provision is made by 19 & 20 Vict. c. 50, for the sale of advowsons vested in, or in trustees for, inhabitants, ratepayers, freeholders, or other persons forming a numerous class and deriving no pecuniary advantage therefrom. The Act does not extend to advowsons belonging to an endowed charity within the Charitable Trusts Acts (*d*). The sale is directed by the inhabitants, ratepayers, or freeholders, or other class of persons (*e*), and is carried out by the existing trustees or by trustees to be elected under the Act (*f*).

(*c*) Per Lord Cranworth in *President, &c., of Magdalen Coll., Oxford v. Att.-Gen.*, 6 H. L. C. at p. 205.

(*x*) *Governors of St. Thomas' Hospital v. Charing Cross Ry. Co.*, 1 J. & H. 400. The common law rule with regard to corporations seems to be that, when duly created, they have, as incident to their incorporation, the same power to purchase and alien real estate as an individual. See *Case of Sutton's Hospital*, 10 Co. 30 b; *Riche v. Ashbury Railway Carriage Co.*, L. R. 9 Ex. at p. 292.

(*y*) Charit. Trusts Amend. Act, 1855, s. 48, *post*.

(*z*) *Att.-Gen. v. Corporation of Plymouth*, 9 Beav. 67.

(*a*) 35 & 36 Vict. c. 24, s. 1, *post*.

(*b*) *Att.-Gen. v. Archbishop of York*, 17 Beav. 495.

(*c*) *Att.-Gen. v. Ward*, 7 L. J. O. S. Ch. 114, 119.

(*d*) Sect. 1.

(*e*) Sects. 2, 3.

(*f*) Sects. 4, 6, 7.

The purchase-money is applied in providing a parsonage, increasing the value of the living, repairing the church, erecting schools, &c., or (in default of other objects) the relief of the poor (*g*).

In the case of charities falling within the Charitable Trusts Acts (*h*), the trustees or administrators are forbidden to sell the charity estates except under the authority of Parliament, or a Court or judge of competent jurisdiction, or according to a scheme legally established, or with the approval of the Charity Commissioners (*i*).

Charit.
Trusts Acts.
Restrictions
on sales by
trustees.

The Board of Charity Commissioners may, upon the application of the trustees of or persons administering a charity, representing that a sale of charity land would be advantageous to the charity, and if, after inquiry, they are satisfied that such is the case, authorize such sale and give such directions in relation thereto, and for securing the due investment of the purchase-money, as they think fit (*k*).

Power of
Charity Com-
missioners to
authorize
sale.

This power is not affected by the Allotments Extension Act, 1882 (*l*).

Not affected
by Allotments
Extension
Act, 1882.
Removal of
site.

The Charity Commissioners not infrequently authorize a sale for the purpose of removing the site of a charitable institution in cases in which it is beneficial to the charity. And it has been expressly decided that the removal of the site of a school is within the powers conferred upon them by the Endowed Schools Acts (*m*).

The Board may also authorize the sale of any rent-charge charged upon land for the benefit of a charity, or applicable to charitable purposes, to the owners of the land charged therewith, and may give directions for the investment of the proceeds of sale, or for securing the application thereof to such charitable purposes as they may think fit. The trustees may also, with the consent of the Board, purchase any rent-charge to which the charity estate is liable (*n*).

Sale or
purchase of
rent-charge.

(*g*) Sect. 9. With regard to the sale of benefices, advowsons, and rights of patronage belonging to Oxford, Cambridge, and Durham Universities, and any of their colleges, and the Colleges of Winchester and Eton, see 3 & 4 Vict. c. 113, ss. 69, 70; 23 & 24 Vict. c. 59, ss. 7—10; and as to Shrewsbury School, 31 & 32 Vict. c. 118, s. 22; and as to Greenwich Hospital, 28 & 29 Vict. c. 89, s. 44. And as to the sale of advowsons and presentations belonging to municipal corporations, see the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 122. As to the exchange of advowsons by ecclesiastical corporations, &c., see 16 & 17 Vict. c. 50; 23 & 24 Vict. c. 124, s. 42.

(*h*) This restriction does not apply to charities or institutions exempted from the Acts: *Royal Society of London v.*

Thompson, 17 Ch. D. 407; *Finnis and Young to Forbes and Pochin* (No. 1), 24 Ch. D. 587. As to the exemptions from the Acts, see Charit. Trusts Act, 1853, s. 62, and notes thereto, *post*.

(*i*) Charit. Trusts Amend. Act, 1855, s. 29, and note thereto, *post*.

(*k*) Charit. Trusts Act, 1853, s. 24, *post*. As to the practice of the Charity Commissioners, see n. (*a*) to that section.

(*l*) *Parish of Sutton to Church*, 26 Ch. D. 173. The Allotments Extension Act, 1882, will be found in Part III. of this Book, *post*.

(*m*) End. Schools Act, 1869, s. 9, *post*. See *Re Free Grammar School, &c. at Hemsworth*, 12 App. Cas. 444, cited in n. (*a*) to that section.

(*n*) Charit. Trusts Act, 1853, s. 25, *post*.

Power to ascertain lands charged with rent not exceeding 10l.

Where it is uncertain out of what specific part of any lands a rent-charge in favour of charity, not exceeding 10l., is payable, the Board may, with the consent of the persons interested, determine what part of the land is so charged, and such part only is thenceforth subject to the rent-charge, and the residue is exonerated (o).

Validity.

Sales and other transactions authorized by the Board are as valid as if they had been directed by the express terms of the trust (p), and are valid and effectual notwithstanding any disabling Acts (q).

Majority of trustees may convey.

Where charity trustees have power to determine on any sale or other disposition of charity property, a majority of the trustees may do all necessary acts and execute all necessary assurances; and such acts and assurances have the same effect as if all the trustees and the official trustee of charity lands had concurred therein (r).

Literary and Scientific Institutions Act.

By the Literary and Scientific Institutions Act, 1854 (s), s. 6, corporations, justices, trustees, and others are empowered to convey lands for the purposes of that Act; but no property held upon trust for charitable purposes may be granted without the consent of the Charity Commissioners.

The section is as follows:—

17 & 18 Vict. c. 112, s. 6.

“Any corporation, ecclesiastical or lay, whether sole or aggregate, and any officers, justices of the peace, trustees, or commissioners, holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, may, subject to the provisions hereinafter mentioned, grant, convey, or enfranchise for the purpose of this Act such quantity of land as aforesaid (t), in any manner vested in such corporation, officers, justices, trustees or commissioners; provided that no ecclesiastical corporation sole, being below the dignity of a bishop, shall be authorized to make such grant without the consent in writing of the bishop of the diocese to whose jurisdiction the said ecclesiastical corporation shall be subject; provided also, that no parochial property shall be granted for such purpose without the consent of a majority of the ratepayers and owners of property in the parish to which the same belongs, assembled at a meeting to be convened according to the mode pointed out in the Act passed in the sixth year of the reign of his late Majesty, intituled ‘An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of

(o) Charit. Trusts Act, 1855, s. 33, *post*.

(p) Charit. Trusts Act, 1853, s. 26, *post*.

(q) Charit. Trusts Amend. Act, 1855, s. 38, *post*; and see *Parish of Sutton to Church*, 26 Ch. D. 173, cited in n. (b) to that section. With regard to the disabling Acts, 13 Eliz. c. 10; 14 Eliz. cc. 11 and 14; 18 Eliz. c. 11; 39 Eliz.

c. 5; and 21 Jac. I. c. 1, see *post*, pp. 262 *et seq*.

(r) Charit. Trusts Act, 1869, s. 12, *post*.
(s) 17 & 18 Vict. c. 112, intituled “An Act to afford greater facilities for the establishment of institutions for the promotion of literature and science and the fine arts, and to provide for their better regulation.”

(t) Not more than one acre: see sect. 1.

Parishes in England and Wales,' and without the consent of the Poor Law Board, to be testified by their seal being affixed to the deed of conveyance, and of the guardians of the poor of the union within which the said parish may be comprised, or of the guardians of the poor of the said parish where the administration of the relief of the poor therein shall be subject to a board of guardians, testified by the guardians of such union or parish being the parties to convey the same; and that no property held upon trust for charitable purposes shall be granted without the consent of the Charity Commissioners."

Under the Copyhold Act, 1858 (*u*), s. 15, the enfranchisement money, &c., of copyholds of any manor held upon a charitable trust may, at the option of the lord, be paid to the official trustees of charitable funds.

Enfranchise-
ment money
of copyholds
of manor held
on charitable
trust.

The section is as follows:—

21 & 22 Vict.
c. 94, s. 15.

"In the case of a corporation or other lord of any manor holden upon any charitable trust within the provisions of the Charitable Trusts Act, 1853, or Charitable Trusts Amendment Act, 1855, not authorized to make an absolute sale otherwise than under the provisions of the said last-mentioned Act, or of the Copyhold Acts, the consideration money to be paid for the redemption or sale of any rent-charge, or as compensation for any enfranchisement, may, at the option of the lord, be paid into the hands of the Official Trustees of Charitable Funds acting under the said Charitable Trusts Acts, in trust for the charity to which the manor shall belong; and the principal moneys shall be applied by the trustees, under the order of the Charity Commissioners for England and Wales, for the purposes to which the said money, if paid into the Bank of England in the name of the Accountant-General of the Court of Chancery, would be applicable under the Copyhold Acts, and in the meantime shall be invested, and the dividends of such investments shall be applied, according to the provisions of the said Acts relating to charitable funds paid to such Official Trustees."

Under the Lands Clauses Consolidation Act, 1845 (*w*), lands may be purchased from charity trustees either by agreement or compulsorily.

Sales under
Lands Clauses
Act.

With regard to the purchase of lands by agreement, trustees or feoffees in trust for charitable purposes are empowered by the Act to sell, convey, or release lands, and to enter into agreements for that purpose (*x*).

Charity
trustees may
sell.

The purchase-money or compensation must, except where it is determined by the verdict of a jury, or by arbitration, or by a

Determina-
tion of
purchase-

(*u*) 21 & 22 Vict. c. 94.
(*w*) 8 & 9 Vict. c. 18.

(*x*) Sect. 7. See this section set out
in App. I., *post*.

money or
compensation.

surveyor appointed by two justices under the Act, be determined by the valuation of two able practical surveyors, one nominated by each party, or if they cannot agree, then by a surveyor nominated by the justices on the application of either party (*y*).

Sanction of
Charity Com-
missioners not
necessary.

The sanction of the Charity Commissioners is not required to a sale under this Act (*z*).

Provisions of
Act must be
complied
with.

Where charity trustees or a charitable corporation have no power to sell except under the Lands Clauses Act, the provisions of sect. 9 (*a*) must be strictly complied with; otherwise the contract for sale cannot be enforced (*b*).

Transfer of
school to
School Board.

By the Elementary Education Act, 1870 (*c*), the managers of any elementary school in the district of a School Board may make arrangements for transferring the school to the School Board.

The arrangement must receive the consent of the Education Department of the Privy Council, and of a majority of the annual subscribers (if any), and where there is an instrument declaring the trusts of the school, and such instrument contains a provision for the alienation of the school by any persons or in any manner, or subject to any consent, the arrangement must be by the persons in the manner and with the consent so provided; and where it appears to the Education Department that there is any trustee of the school who is not a manager, they must cause the managers to serve notice upon him, and must consider and have due regard to any objections and representations which he may make; they must also consider and have due regard to objections and representations made by any person who has contributed to the establishment of the school.

When consent
to transfer
required.

Where a school was established by and united with the National Society, on the express condition that children were to be instructed according to the established religion, which would not be observed if the school were transferred to the School Board (*d*), but the instrument declaring the trusts contained no provision with regard to alienation, it was held that the consent of the National Society was not necessary to a transfer of the school to the School Board, and that any objections which the Society might have must be raised before the Education Department (*e*).

Funds how

In *School Board for London v. Faulconer* (*f*) a certain annual

(*y*) Sect. 9. As to how the purchase-money or compensation is to be dealt with, see *post*, pp. 279 *et seq.*

(*z*) *St. Thomas' Hospital v. Charing Cross Ry. Co.*, 1 J. & H. 400, 406.

(*a*) See App. I., *post*.

(*b*) *Wycombe Ry. Co. v. Donnington Hospital*, L. R. 1 Ch. 268; and see *Bridgend Gas and Water Co. v. Dunraven*, 31 Ch. D. 219.

(*c*) 33 & 34 Vict. c. 75, s. 23.

(*d*) Under sect. 14 of the Elem. Educo. Act, 1870, no religious doctrines peculiar to any particular denomination are to be taught in a Board School.

(*e*) *National Society v. School Board for London*, L. R. 18 Eq. 608.

(*f*) 8 Ch. D. 571. See also *Re Shakespeare Walk School*, 12 Ch. D. 178.

sum out of the funds of a charity had, by the scheme regulating the charity, been directed to be paid by the charity trustees to the treasurer of a school association in aid of the expenses of a certain school, "or any other school that may be established in its stead," and if the school should "become materially altered in discipline, number of children, or other circumstances," then to other educational purposes. The school and its endowment having been transferred to the School Board, it was held that the charity trustees were bound to pay the sum in question to the School Board.

dealt with on transfer.

But where the terms of the trust would not be satisfied by payment to the School Board, the endowment of the school should be applied, not to the general purposes of the school, but to the advancement of education within it (*g*).

Leases.

The Court has power to authorize leases of charity property. And, in cases where it refuses to direct a sale, it may order the property to be let (*h*).

Authorized by Court.

As the Court will, where beneficial, order a sale of charity property (*i*); so, also, where beneficial, it will authorize a lease for a long term of years.

Long leases.

Thus, in *Re Cross' Charity* (*k*), the Court, upon an application under the old Settled Estates Act (*l*), authorized the trustees of a charity to grant building leases for 600 years, such being the custom of the neighbourhood, and it appearing to be for the benefit of the charity.

Although the Court will have due regard to the outlay of capital and improvements by an old tenant, nevertheless it will not refuse a higher rent from another.

Court will have regard to outlay of old tenant, but will not refuse higher rent from another.

Where an old tenant from year to year of charity lands had by an outlay of capital greatly enhanced their value, and he and another person were both willing to take a lease at a rent exceeding the value; but the rent offered by the old tenant was the lowest; it was held that the best offer ought to be accepted, if the excess of the rent offered by the proposed new tenant exceeded the amount of compensation to which the old tenant was equitably entitled on being turned out, and a reference was, under the circumstances, directed to ascertain what compensation ought to be paid to the outgoing tenant for his outlay of capital (*m*).

(*g*) *Re Poplar and Blackwall Free School*, 8 Ch. D. at p. 545. See *ante*, p. 173. As to the taking of charity lands by a Burial Board, see 15 & 16 Vict. c. 85, s. 29.

(*h*) *Re Suir Island Female Charity School*,

3 J. & Lat. at p. 174.

(*i*) *Ante*, p. 250.

(*k*) 27 Beav. 592.

(*l*) 19 & 20 Vict. c. 120.

(*m*) *Att.-Gen. v. Gains*, 11 Beav. 63.

Compensation
to outgoing
tenant.

Upon the same principle, where an order had been made in a suit, that the master of a charity should be at liberty to let a farm to the old tenant for twenty-one years, at a rent of 800*l.* a year; after the lease had been approved of, but before it had been executed, an offer was made of an increased rent of 220*l.*; but the tenant in the meanwhile had laid out a large sum in artificial manures for the farm; it was held that the offer of so great an increase of rent could not be refused, but that the old tenant was entitled to an allowance for his outlay (*n*).

Custom to
renew on
easy terms.

Where it had been the custom of an ancient charity that lessees should have renewals of leases on easy terms, and under a scheme settled by the Court the estates had been let on leases for lives upon payment of a fine on the dropping of each life, the Court, in settling a new scheme, refused to permit such renewal of leases, or to allow leases to be granted except at rack rent. But it was directed that in granting new leases regard should be had to the claims of lessees who had expended money on the faith of renewals (*o*).

Provision
against
assignment to
indigent or
improper
person.

In settling a scheme for letting charity lands, a clause against assigning to "an indigent or improper person" was omitted as likely to lead to litigation (*p*).

Model lease
appended to
order.

Where it was necessary to grant a large number of building leases of charity lands in nearly the same form under the provisions of an Act of Parliament, and one lease had been settled in chambers, the Court allowed the charity to grant other building leases from time to time in the same form without a reference to chambers, the model lease being appended to the order (*q*).

Leases left to
be governed
by Charitable
Trusts Act.

In a recent case a scheme was, on the application of the Attorney-General, altered by striking out a clause as to the granting of building leases, so as to leave the granting of such leases to be governed by sect. 21 of the Charitable Trusts Act, 1853 (*r*).

Founder's
direction
binding.

The directions of the founder with regard to the granting of leases must be observed.

In *Att.-Gen. v. Mayor of Rochester* (*s*), it appeared that a reference had been granted by Leach, V.-C., to inquire whether it would be beneficial to the charity that the estates should be let for terms of ninety-nine years instead of twenty-one, as required by

(*n*) *Att.-Gen. v. Pretymen*, 19 Beav. 538. See also *Att.-Gen. v. St. John's Hospital, Bath*, L. R. 1 Ch. 92.

(*o*) *Att.-Gen. v. St. John's Hospital, Bath*, L. R. 1 Ch. 92. See also, as to the disfavour with which renewable leases are regarded by the Court, *Re Henry Smith's Charity*, 20 Ch. D. 516; and cf. *Att.-Gen. v. Wyggeston Hospital*,

12 Beav. 113.

(*p*) *Att.-Gen. v. Donnington Hospital*, 16 Jur. 599.

(*q*) *Att.-Gen. v. Christ Church, Oxford*, 3 Giff. 514.

(*r*) *Re Henry Smith's Charity*, 20 Ch. D. 516.

(*s*) 2 Sim. 34. See also *Att.-Gen. v. Griffith*, 13 Ves. 565.

the will of the founder. Upon a petition to confirm the report of the Master, who had found in the affirmative, Hart, V.-C., said, that as the order for the reference had been made by the judge who preceded him, he should confirm the report; but that he would not take such a lease under the order of any Court of equity. There must be an Act of Parliament to render legal such a deviation from the founder's intention.

Nor can the terms prescribed by the trust be exceeded by means of a covenant for renewal (t).

Covenant for renewal beyond prescribed term.

The founder's intention, though generally followed, is not binding where he directs the rents of the charity estates not to be raised. Such a direction is simply inoperative, and the most must be made of the property (u).

Direction that rents not to be raised not binding.

And a direction that leases shall be granted at low rents may, as we have seen, be void for remoteness (x).

It has been held improper for a college to make orders recommending their successors to renew at less than a rack rent (y).

Recommendation to successors to renew at low rent.

Where a corporation had under a private Act power to sell and exchange, a power to lease with an option to purchase was held to be implied (z).

Power of sale and exchange authorizes lease with option to purchase.

A power of leasing in the most general terms does not absolve the trustees from the duty of exercising a discretion as to the duration and terms of the lease.

Trustees must exercise discretion.

Thus where a power was given to trustees of charity lands in a town to demise for such yearly rents as to them should "seem meet and expedient," it was held not to justify a lease for five hundred years at a fixed rent of £6 (a).

And the Court may control the trustees in the exercise of their power (b).

Control of Court.

It is a breach of trust to grant a lease of charity estates at an improperly low rent (c). But in order that a lease may be set

Undervalue.

(t) *Lydiatt v. Foach*, 2 Vern. 410; *Watson v. Master of Hemsworth Hospital*, 14 Ves. 324, 333.

(u) *Watson v. Master of Hemsworth Hospital*, 2 Vern. 596; *Lydiatt v. Foach*, *supra*; *Att.-Gen. v. Master, &c., of Catherine Hall, Cambridge*, Jac. 381; *Att.-Gen. v. Archbishop of York*, 17 Beav. 495.

(x) *Att.-Gen. v. Greenhill*, 33 Beav. 193; *Hops v. Corporation of Gloucester*, 7 De G. M. & G. 647. See *ante*, p. 57.

(y) *Taylor v. Dulwich College*, 1 P. Wms. 655.

(z) *Re Female Orphan Asylum*, 15 W. R. 1056.

(a) *Att.-Gen. v. Davey*, 19 Beav. 521. As to the restrictions imposed by the Charit. Trusts Acts on the granting of leases by trustees, see *post*, pp. 264, 265.

(b) *Ex parte Berkhamstead Free School*, 2 V. & B. at p. 138.

(c) *Croucher v. Citizens of Worcester*, Duke, 33; *Rowe v. Almshouses of Tavistock*, Duke, 42; *Poor of Yereel v. Sutton*, Duke, 43; *Wright v. Newport-Pond School*, Duke, 46; *Inhabitants of Eltham Parish v. Warreyn*, Duke, 67; *Att.-Gen. v. Lord Gower*, 9 Mod. 224, 229; *East v. Ryal*, 2 P. Wms. 284; *Att.-Gen. v. Dixie*, 13 Ves. 519; *Att.-Gen. v. Magwood*, 18 Ves. 315; *Att.-Gen. v. Morgan*, 2 Russ. 306.

aside on the mere ground of undervalue, the undervalue must be satisfactorily proved, and considerable in amount (*d*).

Length of
lease.

In the absence of any direction as to the duration of leases, it is in general laid down that where the trustees of a charity grant a lease for a longer duration than is ordinarily consistent with proper management, the onus is upon the persons taking under it to show that it was, under the circumstances, a reasonable transaction (*e*).

Same
principles
apply to long
leases as to
sales.

The same principles which apply to an absolute alienation of charity lands apply also to a long lease. Where, therefore, an absolute alienation by trustees would be a breach of trust (*f*), it is equally so to produce the same result by means of a long lease (*g*), or a lease for an ordinary term with a covenant for perpetual renewal (*h*).

In *Att.-Gen. v. Pilgrim* (*i*), a lease of charity lands for nine hundred and ninety-nine years was set aside after a hundred and fifty years; and Lord Cottenham (*k*), in affirming the decision, observed that it was an established rule of the Court that leases of that sort, amounting to an alienation, were, *prima facie* at least, not to be supported.

Long lease
upheld when
beneficial.

Where it appeared that a lease for nine hundred and ninety-nine years, at a fixed rent, was free from fraud, and for the benefit of the charity, it was upheld (*l*).

Lease with
covenant for
perpetual
renewal.

A lease with a covenant for perpetual renewal cannot ordinarily be sustained, at any rate for a consideration not shown to be an equivalent for the inheritance (*m*).

Upheld where
consideration
sufficient.

It may, however, be supported if made for proper value (*n*).

Trustees of a charity estate in Ireland, in 1710, granted a lease for lives, renewable for ever, at a rent of £100 a year, for £300 fine, and a fine of £25 for renewal on the dropping of every life. An information to set aside the lease was dismissed, and that decision was affirmed by the House of Lords. In giving judgment Lord Brougham, after stating that it appeared to him that the lease

(*d*) *Att.-Gen. v. Cross*, 3 Mer. at p. 541; *Re Lawford Charity*, 2 Mer. at p. 457. See post, p. 290.

(*e*) See *Att.-Gen. v. Green*, 6 Ves. 452; *Att.-Gen. v. Owen*, 10 Ves. 555; *Att.-Gen. v. Griffith*, 13 Ves. 565; *Att.-Gen. v. Backhouse*, 17 Ves. 283; *Att.-Gen. v. Ward*, 7 L. J. Ch. 114; the remarks of Plumer, M. R., in *Att.-Gen. v. Warren*, 2 Swanst. 291; *Att.-Gen. v. Brettingham*, 3 Beav. 91; *Att.-Gen. v. Hall*, 16 Beav. 388.

(*f*) See ante, p. 251.

(*g*) *Att.-Gen. v. Green*, supra; *Att.-Gen. v. Pilgrim*, 12 Beav. 57.

(*h*) *Lydiatt v. Foach*, 2 Vern. 410; *Att.-Gen. v. Brooke*, 18 Ves. at p. 326; *Att.-Gen. v. Hungerford*, 2 Cl. & F. 357.

(*i*) 12 Beav. 57.

(*k*) 2 H. & Tw. 186, 188.

(*l*) *Att.-Gen. v. South Sea Co.*, 4 Beav. 453. See however the remarks of Lord Cottenham upon this case in *Att.-Gen. v. Pilgrim*, 2 H. & Tw. at p. 188.

(*m*) *Att.-Gen. v. Brooke*, 18 Ves. 326; and see *Watson v. Master of Hensworth Hospital*, 14 Ves. 324; *Clayton v. Att.-Gen.*, 1 C. P. Coop. 97, 134. A covenant for perpetual renewal has been enforced against a corporation, where there was not sufficient evidence to show that the property was charitable: *Gozna v. Aldermen of Grantham*, 3 Russ. 261.

(*n*) See *Att.-Gen. v. Hungerford*, 2 Cl. & F. 357.

was for adequate value, and that there was no positive law or rule of the Court forbidding the grant of a long term, or even an alienation, if the alienation was for the benefit of the trust, said, with regard to its being a provident bargain, "At that time in Ireland the course was to let leases upon lives with covenants for perpetual renewal . . . on a fine received at the time of each of the renewals, with a certain rent besides . . . the trustees of the charity were bound to do what a prudent and provident landlord, with his own estate, would do . . . My Lords, no trustee is bound to be a prophet: he is bound to act with providence and foresight to a reasonable extent, but he is not bound to an absolute foreknowledge, which no man can have of events that afterwards do occur. . . . The complaint of abuse must not be simply that he has not selected that mode by which the lease, if granted now, would be rendered most profitable." And, his Lordship added, with respect to time, that although it was no bar in the case of a charity, it was at all events in such a case a circumstance which produced a very powerful obstacle not easily got over, in the way of any court of judicature that might set aside what had stood so long, and might have been made the subject of so many arrangements (o).

The grant of a reversionary term was always, it seems, objectionable (p). Reversionary term.

A husbandry or farm lease for a longer term than twenty-one years, as, for instance, for ninety-nine years, would *prima facie* be set aside (q). And a building lease for a longer term than ninety-nine years cannot stand, unless there be some special ground on which it can be supported (r). Husbandry and building leases.

There is, however, no principle that a lease for lives is necessarily a breach of trust (s). Lease for lives.

The Court will not, however, allow a scheme to contain a power of leasing for lives (t); and the Charitable Trusts Acts, as we shall

(o) *Att.-Gen. v. Hungerford*, *supra*, at pp. 376, 377. See *S. C. 8 Bli. N. S. 437*; and see *Att.-Gen. v. Smith*, 2 Vern. 746, where a person who had at great expense recovered an estate for the charity, which had got into the hands of patentees as concealed lands, was in consideration thereof allowed by Lord Coventry to have a lease for ninety-nine years, determinable on three lives at one-third part of the improved value, and renewable for ever. See however the remarks on that case in *Watson v. Master of Hemsworth Hospital*, 14 Ves. at pp. 333, 334; and in *Att.-Gen. v. Warren*, 2 Swanst. at p. 303.

(p) *Att.-Gen. v. Kerr*, 2 Beav. 420.

(q) *Att.-Gen. v. Owen*, 10 Ves. 555; *Att.-Gen. v. Backhouse*, 17 Ves. 283, 291; *Att.-Gen. v. Lord Hotham, T. & R.* at p. 216; *Att.-Gen. v. Fargeter*, 6 Beav. 150; *Att.-Gen. v. Hall*, 16 Beav. 388.

(r) Per Lord Langdale, *M. R.*, in *Att.-Gen. v. Foord*, *supra*; and see *Att.-Gen. v. Owen*, 10 Ves. at p. 560; *Att.-Gen. v. Backhouse*, 17 Ves. at p. 291.

(s) *Att.-Gen. v. Cross*, 3 Mer. 524; *Att.-Gen. v. Crook*, 1 Keen, 121, 127; and see *Att.-Gen. v. Price*, 3 Atk. 110.

(t) *Att.-Gen. v. St. John's Hospital, Bath*, L. R. 1 Ch. 92.

see (u), place restrictions on the granting of such leases by trustees.

Fines.

A general power of leasing given to charity trustees has been held to authorize them either to take fines or reserve rents as may be most beneficial (x).

Where ordinances of a hospital, purporting to have been made under letters patent, and confirmed by a private Act of Parliament, gave the master the whole management of the charity property, and authorized him to let on fines and appropriate the fines to his own use, they were set aside on the ground (1) that they were not authorized by the letters patent and statutes, and (2) that, even if they were, they had in course of time become prejudicial, and the Court would therefore direct a new mode of management to be adopted (y).

The Court struck a clause authorizing leases on fines out of a scheme, leaving the granting of leases to be governed by the Charitable Trusts Acts (z).

Letting by tender.

The letting of hospital estates by tender was not disapproved of (a).

Leases by trustees to themselves.

The trustees or governors of a charity cannot grant a lease to or in trust for one of themselves (b); and a trustee tenant will be charged with an occupation rack rent (c).

Relations.

If the tenant is a relation of the trustee, that is a circumstance to excite suspicion, and if combined with some other circumstance (as too low rent) may induce the Court to set the lease aside (d).

Stipulation for benefit of trustees.

Nor can trustees insert in a lease any stipulation or covenant for their own private advantage (e).

Lease in contravention of trusts. Disabling statutes.

13 Eliz. c. 10.

Nor of course can they grant a lease in direct violation of their trusts (f).

In order to prevent "long and unreasonable leases," it was enacted by 13 Eliz. c. 10, "that all leases, gifts, grants, feoffments, conveyances, or estates, to be made, had, done, or suffered by any master and fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital (g), parson,

(u) *Post*, p. 265.

(x) *Att.-Gen. v. Mayor, &c. of Stamford*, 2 Swanst. at p. 592.

(y) *Att.-Gen. v. Wyggeston Hospital*, 12 Beav. 113. See *Att.-Gen. v. Payne*, 27 Beav. 168.

(z) *Re Henry Smith's Charity*, 20 Ch. D. 516.

(a) *Re Lady Peyton's Hospital*, 14 L. J. Ch. 129.

(b) *Att.-Gen. v. Dixie*, 13 Ves. 519; *Att.-Gen. v. Earl of Clarendon*, 17 Ves. 491.

(c) *Att.-Gen. v. Dixie*, *supra*, at p. 534;

Att.-Gen. v. Earl of Clarendon, *supra*, at p. 500. See also *Food v. Baker*, 27 Beav. 193; *Att.-Gen. v. Corporation of Cashel*, 3 Dr. & W. 294, where the lease was by a municipal corporation to one of their own body.

(d) *Re Lawford Charity*, 2 Mer. at p. 457. See *Att.-Gen. v. Dixie*, *supra*.

(e) *Att.-Gen. v. Mayor of Stamford*, 2 Swanst. 592; and cf. *Att.-Gen. v. Corporation of Plymouth*, 9 Beav. 67.

(f) *Ward v. Hipwell*, 3 Giff. 547.

(g) By 14 Eliz. c. 14, it is enacted and declared that the words master or

vicar, or any other having any spiritual or ecclesiastical living, or (*sic*) any houses, lands, tythes, tenements, or other hereditaments, being any parcel of the possessions of any such college, cathedral church, chapter, hospital, parsonage, vicarage, or other spiritual promotion, or any ways appertaining or belonging to the same, or of any of them, to any person or persons, bodies politic or corporate (other than for the term of one and twenty years, or three lives from the time as any such lease or grant shall be made or granted, whereupon the accustomed yearly rent or more shall be reserved and payable yearly during the said term), shall be utterly void and of none effect, to all intents, constructions, and purposes; any law, custom, or usage to the contrary any ways notwithstanding" (*h*).

By 14 Eliz. c. 11, houses in any city, borough, town corporate, 14 Eliz. c. 11. or market town, or the suburbs of any of them, affected by 13 Eliz. c. 10, may be let (*i*), provided the house be not the capital or dwelling-house of the lessors, nor have ground to the same belonging above the quantity of ten acres (*j*), and provided that thereof no lease be made in reversion, nor without reserving the accustomed yearly rent at the least, nor for a longer term than forty years, nor without charging the lessee with the reparations. Absolute alienation of such houses by way of exchange for lands of as good value is also allowed (*k*).

By 18 Eliz. c. 11, it is enacted that all leases within 13 Eliz. 18 Eliz. c. 11. c. 10, of any hereditaments, "whereof any former lease for years is in being, not to be expired, surrendered, or ended within three years (*l*) next after the making of any such new lease, shall be void, frustrate and of none effect; any law, usage or custom to the contrary notwithstanding" (*m*).

By 39 Eliz. c. 5, being "An Act for erecting of hospitals, or 39 Eliz. c. 5. abiding and working houses for the poor" (revived and made perpetual by 21 James I. c. 1), it was enacted, that "all leases, grants, conveyances, or estates to be made by any corporation so to be founded as aforesaid, exceeding the number of one-and-twenty years, and that in possession, and whereupon the accustomed

guardian of any hospital "were intended and meant of all hospitals, maison Dieu, beadhouses, and other houses ordained for the sustentation or relief of the poor." The words include the plural so as to apply to governors or trustees. See *Moore v. Clench*, 1 Ch. D. at p. 452; *Magdalen College Case*, 11 Rep. 66 b.

(*h*) Sect. 2.

(*i*) See *Bettesworth v. Dean, &c. of St. Paul's*, 1 Bro. P. C. 240, Toml. ed.

(*j*) Sect. 5.

(*k*) Sect. 7. By 18 Eliz. c. 6, it is provided with regard to leases by colleges in the Universities, and by the Colleges of Winchester and Eton, that one-third of the whole rent shall be reserved in corn, namely, "in good wheat, after 6s. 8d. the quarter or under, and good malt at 5s. the quarter and under."

(*l*) See *Grumbrell v. Roper*, 3 B. & Al. 711.

(*m*) Sect. 1.

yearly rent or more, by the greater part of twenty years next before the making of such lease, shall not be reserved and yearly payable, shall be void" (n).

Decisions on
13 Eliz. c. 10.
Corporations
sole.

Lands held by corporations sole in trust for charities are not within 13 Eliz. c. 10. Thus, if a gift of lands is made to a parson and his successors for ever, to the use of the poor of the parish, a lease by him beyond the time limited by 13 Eliz. c. 10 is not avoided by that Act. The reasons are (1) that it is not a lease of ancient glebe of the church, and (2) because the length of the term could not tend to impoverish the successor, inasmuch as it was given to a charitable use (o).

Eleemosynary
and ecclesi-
astical
corporations.

Eleemosynary as well as ecclesiastical corporations are within 13 Eliz. c. 10 (p). And the Act has been held applicable to the case of a dean and chapter seised of a rectory as trustees for the support of a grammar school, and a covenant by the dean and chapter to take a perpetual composition in lieu of tithes was held void (q).

Leases
obnoxious to
Act void.

A lease by a corporation within the Act which does not comply with its provisions is void, not merely voidable (r).

Moore v.
Clench.

In *Moore v. Clench* (s) the governors and trustees of a hospital granted a lease for 41½ years from a past date, being 40 years and one month from the date of the lease, with a concurrent term of 99 years if three persons therein named should so long live, and they covenanted during the term of 40 years and one month to add new lives when any dropped. It was held that the lease was void under the statutes of Elizabeth, and consequently that the covenant could not be enforced.

Letting in
allotments.

The Allotments Extension Act, 1882 (t), makes it imperative on trustees holding lands for the benefit of the poor of a parish or place, if the rents or produce are distributed in doles, fuel, clothing, &c., and the lands are not used as a recreation ground or for the general benefit of the inhabitants, to take proceedings as provided by the Act for letting the lands in allotments.

Charit. Trusts
Acts.

In the case of charities falling within the Charitable Trusts Acts (u), the trustees or administrators are forbidden, except under

(n) Sect. 2.

(o) *Banister's Case*, Duke, 139; Grant on Corporations, p. 648.

(p) *President, &c. of Magdalen Hospital v. Knotts*, 4 App. Cas. 324; and see *Att.-Gen. v. Glyn*, 12 Sim. 84, 87.

(q) *Dean and Chapter of York v. Middleburgh*, 2 Y. & J. 198. See also *Doe v. Lord Yarborough*, 7 Moo. C. P. 258.

(r) *President, &c. of Magdalen Hospital v. Knotts*, *supra*, overruling the dictum *Bishop of Exeter v. Barry* 1891.

2 Q. B. 277.

of Martin, B., in *Pennington v. Cardale*, 3 H. & N. 656, 666. See also *Moore v. Clench*, 1 Ch. D. 447; *Collegiate House of Southwell v. Bishop of Lincoln*, 1 Mod. 204; 2 Mod. 56.

(s) 1 Ch. D. 447.

(t) Sect. 4, *post*, Part III. of this Book.

(u) As to the cases to which these Acts do not apply, see sect. 62 of the Charit. Trusts Act, 1853, and notes

the authority of Parliament or a Court or judge of competent jurisdiction, or according to a scheme legally established, or with the approval of the Charity Commissioners, to grant a lease of the charity estates in reversion after more than three years of an existing term, or for any term of life, or in consideration wholly or in part of a fine, or for any term exceeding twenty-one years (x).

Restriction on leases by trustees.

A lease coming within this section may be granted without the consent of the Commissioners, if made in pursuance of a valid contract in existence before the Act came into operation, and the Commissioners would in such a case have no power to refuse their sanction (y).

Contract prior to Act.

The Board of Charity Commissioners are empowered, in cases where they consider it beneficial to the charity, to authorize the letting of charity lands on building, repairing, improving, or other leases, or on mining leases, or the digging of stone, clay, gravel, or other minerals, or the cutting of timber, or the formation of new roads or streets, the making of drains or sewers, the erection of buildings, or the repair, alteration, rebuilding, or removal of existing buildings, or any other improvements or alterations in the state or condition of the lands or estates of the charity (z).

Charity Commissioners may sanction building leases, working mines, repairs, improvements, &c.

The Board may also authorize the application of the charity funds for any of the purposes or acts aforesaid, and, if necessary, may authorize the trustees to raise the required sums by mortgage (a).

Provision of funds.

They may also authorize the application of funds belonging to the charity or raised on the security of the properties thereof to any other purpose or object which they may consider beneficial to the charity or the estate or objects thereof, and which is not inconsistent with the trust or intentions of the foundation (b).

Application of funds for any beneficial purpose.

As a rule, the Charity Commissioners require any expenditure out of capital for repairs, improvements, or other purposes, to be recouped out of income (c).

Expenditure recouped out of income.

thereto, *post*; and see *Royal Society of London and Thompson*, 17 Ch. D. 407; *Finnis and Young to Forbes and Pochin* (No. 1), 24 Ch. D. at p. 591.

(x) Charit. Trusts Amend. Act, 1855, s. 29, and note thereto, *post*.

(y) *Moore v. Clench*, 1 Ch. D. 447. In that case, however, the lease was held bad under the disabling Acts, 13 Eliz. c. 10; 14 Eliz. c. 11; and 18 Eliz. c. 11, *ante*, pp. 262, 263.

(z) Charit. Trusts Act, 1853, s. 21, *post*.

(a) *Ibid*. With regard to mortgages, see *post*, p. 271.

(b) Charit. Trusts Act, 1860, s. 15, *post*.

(c) See n. (c) to sect. 21 of the Charit. Trusts Act, 1853, *post*. This has also been the rule of the Court: *Re Willenhall Chapel Estates*, 2 Dr. & Sm. 467, 469. Thus, where capital has been erroneously applied in paying expenses of management, the Court will if possible direct it to be recouped out of future income: *Andrews v. M'Guffog*, 11 App. Cas. 313, 329. The rule may, however, in a proper case be departed from. In *Re Willenhall Chapel Estates*, *supra*, the sole object of the charity (subject to small charges for repairs, &c.) was the benefit of the incumbent, and the Court, under the special circumstances of the case, and upon petition of the incumbent and the

Reason of rule.

The principle upon which this is done is that the founder of the charity intended "to establish a permanent endowment, and did not intend that the capital should be exhausted during the early years of the institution and the school afterwards left unendowed" (*d*).

Mode of recouping.

And with regard to the mode in which the capital should be recouped, Lord Herschell said, "to do it hastily would perhaps cripple the charity; it may be that it can only be done very slowly; but this will be done, having regard to the fees charged, the object of the bequest, and all the other circumstances of the case. Taking all these matters into consideration, I think that the object of the testator to create a permanent fund, the income of which alone was to be applied to the support of the school, should be distinctly kept in view" (*e*).

Schemes for letting.

The Charity Commissioners are also empowered to prepare and under their seal to approve of any scheme for letting charity property; and leases granted by the trustees of, or persons administering the charity pursuant to, or in conformity with, such scheme are valid (*f*).

Validity of leases authorized by Board.

Leases authorized by the Commissioners are as valid as if they had been directed by the express terms of the trust (*g*), and are valid and effectual, notwithstanding disabling Acts (*h*).

Leases by trustees where land vested in Official Trustee.

Where the charity lands are vested in the Official Trustee of Charity Lands, the charity trustees have the same power to grant leases as they would have had if the estate had remained vested in themselves (*i*).

Power of majority of trustees.

Where charity trustees have power to determine on any lease or other disposition of charity property, a majority of the trustees may execute and do all such assurances, acts, and things as may be necessary; and such assurances, acts, and things have the same effect as if they had been executed and done by all such trustees and by the Official Trustee of Charity Lands (*k*).

Ecclesiastical hospitals.

Ecclesiastical hospitals are excepted from the powers of leasing, sale, and exchange given to ecclesiastical corporations by 5 & 6 Vict. c. 108 and 21 & 22 Vict. c. 57 (*l*).

trustees, ordered 1,000*l.* to be applied out of capital towards repairing and enlarging the chapel, without requiring it to be recouped out of income.

(*d*) Per Lord Herschell in *Andrews v. M'Guffog*, 11 App. Cas. at pp. 329, 330.

(*e*) *Ibid.* at p. 330.

(*f*) Charit. Trusts Act, 1855, s. 39, *post.*

(*g*) Charit. Trusts Act, 1853, s. 26,

post.

(*h*) Charit. Trusts Amend. Act, 1855, s. 38, *post.* As to the disabling Acts, see *ante*, pp. 262, 263. See also *Parish of Sutton to Church*, 26 Ch. D. at p. 177.

(*i*) Charit. Trusts Amend. Act, 1855, s. 16, *post.*

(*k*) Charit. Trusts Act, 1869, s. 12, *post.*

(*l*) 5 & 6 Vict. c. 108, s. 1.

Exchanges.

The Court may, in cases where it is beneficial to the charity, order an exchange of charity lands (*m*).

Court may authorize exchange.
Private Act.

It appears, however, that formerly it was not unusual to obtain a private Act of Parliament for the purpose (*n*).

A power to exchange does not authorize a demise in consideration of another demise (*o*).

Power to exchange does not authorize demise in consideration of demise.
Disabling Acts.

The disabling statutes apply to exchanges of lands by the eleemosynary corporations therein mentioned, but by statute 14 Eliz. c. 11, s. 7, houses, with some exceptions, are allowed to be exchanged for lands "of as good value and of as great yearly value at the least" (*p*).

The statute 4 & 5 Will. IV. c. 30, for facilitating the exchange of lands lying in common fields, extends to trustees for charitable uses and to corporations, whether aggregate or sole, and whether civil, eleemosynary, or ecclesiastical (*q*).

4 & 5 Will. 4, c. 30.
Lands in common fields.

Under the Charitable Trusts Act, 1853 (*r*), the Board of Charity Commissioners may authorize an exchange of charity lands where they are satisfied that it will be for the benefit of the charity. And they may give such directions in relation thereto and for the investment of money paid for equality of exchange as they think fit.

Charity Commissioners may authorize exchanges.

Exchanges and other transactions authorized by the Commissioners are as valid as if they had been expressly authorized by the trusts of the charity (*s*), and notwithstanding the disabling Acts (*t*).

Valid notwithstanding disabling Acts.

The Commissioners may also authorize the application of the charity funds in payments for equality of exchange (*u*), and provision is made for the payment of expenses incident to exchanges (*x*).

Equality of exchange.
Expenses.

And where trustees have power to determine on any exchange of charity lands a majority of the trustees may act and execute

Majority of trustees may act.

(*m*) *Mildmay v. Lord Methuen*, cited 14 Beav. 121, n., per Lord Cranworth. See *Re Alderman Newton's Charity*, 12 Jur. 1011.

(*n*) See *Att.-Gen. v. Buller*, Jac. at p. 412.

(*o*) *President, &c. of Magdalen Hospital v. Knotts*, 26 W. R. 141.

(*p*) See *ante*, p. 263.

(*q*) By 1 & 2 Geo. IV. c. 92 (repealed by the Stat. Law Rev. Act, 1873), power was given to exchange lands, tenements, or hereditaments vested either in individual trustees or any body politic or corporate for any charitable purpose, for other lands, tenements, or hereditaments through the instrumentality of a commission issued by the bishop of the diocese where the charity

property was situate. And it was held that the Court of Chancery had no power to reverse the decision of the Commissioners, and that it was immaterial that the bishop was himself one of the trustees of the charity, he having no personal interest in the property: *Att.-Gen. v. Bishop of Worcester*, 9 Hare, 328.

(*r*) Sect. 24, *post*. And as to the procedure, see notes to that section.

(*s*) *Ibid.* s. 26.

(*t*) Charit. Trusts Amend. Act, 1855, s. 38, *post*. As to the disabling Acts, see *ante*, pp. 262, 263.

(*u*) Charit. Trusts Amend. Act, 1855, s. 32, *post*.

(*x*) *Ibid.*; and see sect. 34 of the same Act.

deeds on behalf of the whole body and of the Official Trustee of Charity Lands (*y*).

Exchanges usually effected by Land Commissioners.

The Land Commissioners are by their Acts enabled to effect exchanges in a simpler and cheaper manner than the Charity Commissioners. Sect. 24 of the Charitable Trusts Act, 1853, merely empowers the Charity Commissioners to authorize exchanges. The orders of the Land Commissioners on the other hand carry the exchanges into effect. Moreover, an exchange effected by the Land Commissioners shifts the title of the land given to the land received, and no defect in the title of the persons from whom it is received can affect the persons to whom it is given. No investigation of title is therefore required beyond ascertaining that the party exchanging is interested in the land within the meaning of the Acts.

Consequently, it is usually advisable, where an exchange is required, to have resort to the Land Commissioners. The Charity Commissioners themselves commonly recommend this course.

The sanction of the Charity Commissioners is not required to an application to the Land Commissioners, and the powers of the latter body are exercised independently of and without communication with the former.

Powers of Land Commissioners.

The powers of the Land Commissioners are derived from the Acts for the inclosure, exchange, and improvement of lands (*z*). They extend to corporeal and incorporeal hereditaments of any tenure, and whether vested in corporations sole or aggregate, or held upon charitable trusts, or belonging to private individuals.

Order for exchange.

Under these Acts the Commissioners are empowered, upon the application in writing of the persons interested (*a*) in lands (including incorporeal as well as corporeal hereditaments (*b*) and copyholds (*c*)) not subject to be inclosed under the Act, or in lands subject to be inclosed, but as to which no inclosure proceedings are pending, to direct inquiries whether a proposed exchange is beneficial; and if the Commissioners are of opinion that it is beneficial, and that the terms are just and reasonable, they shall, unless notice

(*y*) Charit. Trusts Act, 1869, s. 12, *post*.

(*z*) 8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 12 & 13 Vict. c. 83; 14 & 15 Vict. c. 53; 15 & 16 Vict. c. 79; 17 & 18 Vict. c. 97; 20 & 21 Vict. c. 31; 22 & 23 Vict. c. 43; 31 & 32 Vict. c. 89; 39 & 40 Vict. c. 56. The powers of the Commissioners under these Acts were transferred to the Land Commissioners by sect. 48 of the Settled Land Act, 1882 (45 & 46 Vict. c. 38).

(*a*) Defined by 8 & 9 Vict. c. 118, sects. 16—19. They are the persons in actual possession or enjoyment of the land or any part thereof, or any common or common right thereon, or any manor of which such land or any part thereof shall be waste, or the persons in actual receipt of the rents of such land, without regard to the real amount of their interest (except certain lessees and tenants). See also 17 & 18 Vict. c. 97, ss. 2, 4, 5.

(*b*) 17 & 18 Vict. c. 97, s. 3.

(*c*) 9 & 10 Vict. c. 70, s. 9.

of dissent (*d*) is given, make an order of exchange with a map or plan annexed, showing the lands given and taken in exchange. A copy of the order is delivered to each of the parties on whose application the exchange was made. The order of exchange is valid and effectual to all intents and purposes whatsoever, and not liable to be impeached by reason of any infirmity of estate or defect of title of the persons on whose application the same was made; and the land taken upon every such exchange is held to, for, and upon the same uses, trusts, intents, and purposes, and subject to the same conditions, charges, and incumbrances as the lands given on such exchange would have stood limited or been subject to in case such order had not been made. The expenses of the order, or of inquiries in relation thereto, are borne by the persons on whose application the order was made or inquiries undertaken (*e*).

The Commissioners may also divide and allot lands which have become intermixed or are divided into inconvenient parcels (*f*).

Intermixed lands.

And they may, upon the application in writing of the churchwardens and overseers, or the allotment trustees and the persons interested in the land to be given in exchange, exchange inconvenient allotments for the poor inhabitants of a parish, or any class of them, or for other purposes of exercise and recreation, or any other public or parochial purpose, for land more convenient (*g*).

Exchange of inconvenient allotments.

The power of exchange extends to rights of common, rights of fishing, manorial and other rights, easements, quit rents, chief rents, heriots, tithes, and rent charges (*h*).

Rights of common, easements, rents, &c.

Inequality in value, where the deficiency does not exceed one-eighth, may be compensated by a rent charge (*i*); but there is no provision as to payment of money for equality of exchange.

Inequality in value.

By the Commons Act, 1876 (*k*), the Charity Commissioners are empowered, on the application of the trustees of a fuel allotment, to authorize the exchange of any fuel allotment, or any part thereof, for land of equal value situate within the parish or district, for the benefit of the poor of which the allotment was set out, if the Commissioners are of opinion that by means of such exchange land better suited for the purpose for which the allotment was set out will be obtained.

Commons Act, 1876. Exchange of fuel allotments.

Under the Ecclesiastical Leasing Act, 1858 (*l*), lands, houses, mines, minerals, or other property belonging to an ecclesiastical

Property of Ecclesiastical Corporation.

(*d*) See 8 & 9 Vict. c. 118, s. 150.

(*e*) 8 & 9 Vict. c. 118, s. 147. As to the reservation of mines, minerals, and easements, see 10 & 11 Vict. c. 111, s. 4.

(*f*) 8 & 9 Vict. c. 118, s. 148.

(*g*) Sect. 149.

(*h*) 12 & 13 Vict. c. 83, s. 7.

(*i*) 20 & 21 Vict. c. 31, s. 6 *seq.*

(*k*) 39 & 40 Vict. c. 56, s. 19, *post.*

(*l*) 21 & 22 Vict. c. 57; and see 5 & 6 Vict. c. 108.

corporation, may be sold, exchanged, partitioned, or otherwise disposed of by the ecclesiastical corporation with the consent of the Ecclesiastical Commissioners.

Ecclesiastical hospitals.

Ecclesiastical hospitals are, however, excepted (*m*).

Partition.

By Court.

The powers of the Court with regard to partition apply to charity lands equally with others.

No express power given to Charity Commissioners.

No express power of authorizing a partition is given by the Charitable Trusts Acts to the Board of Charity Commissioners.

Provisions of Charit. Trusts Acts as to partition.

Certain provisions are, however, contained in those Acts with regard to partition.

Partition directed under power to compromise.

The Board are empowered to authorize the application of the charity funds in payments for equality of partition (*n*), and provision is made for the payment of expenses incident to partition (*o*).

Power of majority of trustees.

The Board have, however, power to sanction compromises (*p*). Under this power, if a compromise involves a partition, an order for partition may be made.

Partition by Land Commissioners.

Where trustees have power to determine on a partition of charity lands, a majority of them may act and execute deeds on behalf of all, and also on behalf of the official trustee of charity lands (*q*).

Partitions, however, like exchanges (*r*), can be more cheaply and simply effected under the powers possessed by the Land Commissioners, and recourse is consequently usually had to them.

By sects. 13 and 14 of 11 & 12 Vict. c. 99, the provisions as to exchanges contained in the Acts for the inclosure, exchange, and improvement of lands (*s*) are extended to partition. But the provisions as to notice of dissent do not apply to partitions in which the application is made by two-thirds in value of the persons interested (*t*).

Rights of common, easements, &c.

The powers of partition extend to rights of common, rights of fishing, manorial and other rights, easements, quit rents, chief rents, heriots, tithes, and rent charges (*x*).

Partition and exchange.

And power is given to effect a partition and exchange at one and the same time (*y*).

(*m*) 5 & 6 Vict. c. 108, s. 1.

(*n*) Charit. Trusts Amend. Act, 1855, s. 32, *post*.

(*o*) *Ibid.*; and see sect. 34 of the same Act.

(*p*) Charit. Trusts Act, 1853, s. 23; Charit. Trusts Amend. Act, 1855, s. 31, *post*.

(*q*) Charit. Trusts Act, 1869, s. 12, *post*.

(*r*) *Ante*, p. 268.

(*s*) 8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111.

(*t*) 22 & 23 Vict. c. 43, s. 11.

(*x*) 12 & 13 Vict. c. 83, s. 7.

(*y*) 15 & 16 Vict. c. 79, s. 32.

Disproportion in value of the parts allotted in severalty may be compensated for by a rent charge (z). Inequality in value.

The sanction of the Charity Commissioners is not required to partitions (a). Sanction of Charity Commissioners.

Mortgages.

It was held in *Att.-Gen. v. Hardy (b)*, that one of the trustees of a charity might properly become a mortgagee of the charity property. In that case the trust deeds of certain Wesleyan Methodist chapels contained power to raise money by mortgage for the purposes of the trusts, and Lord Cranworth held that any of the trustees might be mortgagee, and might exercise his rights as mortgagee, although in opposition to the trusts. His lordship even went so far as to observe "that the money should be advanced by one of the trustees was natural and quite proper." Trustee mortgagee.

The authority of this case seems doubtful. It clearly falls within the principle of the decisions, that a person holding a fiduciary character must not put himself in a position in which his interest conflicts with his duty.

In the analogous case of *Forbes v. Ross (c)*, it was held by Lord Thurlow that trustees having power to lend money on personal security could not lend it to one of themselves, his lordship observing that he proceeded upon this single ground, that "a trustee cannot bargain with himself so as to derive, through the medium of the contract, any degree of forbearance or advantage whatever to himself." This principle is undoubtedly sound, and it appears to be applicable to the case of a mortgage of the trust property to a trustee as well as to the case of a loan of the funds of the trust to him.

Mortgages of charity property may be ordered by the Court for various purposes, as for instance, for the payment of costs (d). Mortgages by Court.

An unnecessary mortgage by charity trustees may be restrained by injunction (e). Unnecessary mortgage restrained.

Mortgages and charges of charity estates by the trustees are forbidden by the Charitable Trusts Amendment Act, 1855 (f), unless made under the authority of Parliament, or of a Court or judge of Charit. Trusts Acts.

(z) 20 & 21 Vict. c. 31, ss. 6—11.

(a) Partitions are not included in Charit. Trusts Amend. Act, 1855, s. 29, *post*.

(b) 1 Sim. N. S. 338.

(c) 2 Cox, 113.

(d) See *post*, p. 353.

(e) *Rigall v. Foster*, 18 Jur. 39.

(f) Sect. 29, *post*. As to what charities are exempted from the Charit. Trusts Acts, see sect. 62 of the Charit. Trusts Act, 1853, and notes thereto, *post*.

Restriction on mortgages. competent jurisdiction, or according to a scheme legally established, or with the approval of the Charity Commissioners.

Charity Commissioners may authorize mortgages. The Charity Commissioners may authorize the raising on mortgage of sums required for building, repairs, and improvements on charity lands (*g*), or for any other purpose which they may consider beneficial to the charity and not inconsistent with the intentions of the foundation (*h*).

They may also authorize the raising on mortgage of money required for payments for equality of exchange or partition (*i*).

Provisions for payment. Where the Commissioners authorize a mortgage, provision must be made for discharging the principal or any part thereof by instalments within thirty years, or for forming an accumulation or sinking fund out of the income of the charity for discharging the principal or any part thereof within the same period, and the order must contain directions as to the investment and accumulation of such fund (*j*).

Majority of trustees may act. Where the trustees have power to determine on a mortgage, a majority of them may execute all necessary assurances and do all necessary acts as effectually as the whole body of trustees and the Official Trustee of Charity Lands might have done (*k*).

Agricultural Holdings Act, 1883. The powers conferred by the Agricultural Holdings Act, 1883 (*l*), on a landlord in respect of charging the land are not to be exercised by trustees for ecclesiastical or charitable purposes, except with the previous approval in writing of the Charity Commissioners (*m*).

Redemption of Land Tax.

Redemption of land tax. Various powers are given to charity trustees and others for the purpose of enabling a redemption of land tax to be effected (*n*).

Contracts for redemption by corporations and charity trustees. Corporations (notwithstanding the Statutes of Mortmain) and trustees for charitable or public purposes may contract for the redemption of land tax on lands held by them (*o*); and, on obtaining a certificate of two commissioners (*p*), in preference to

(*g*) Charit. Trusts Act, 1853, s. 21, *post.*

(*h*) Charit. Trusts Act, 1860, s. 15, *post.*

(*i*) Charit. Trusts Amend. Act, 1855, s. 32, *post.*

(*j*) Charit. Trusts Amend. Act, 1855, s. 30, *post.* See further, with regard to mortgages and the provisions for payment off, and the practice of the Charity Commissioners, n. (*c*) to sect. 21 of the Charit. Trusts Act, 1853, *post.*

(*k*) Charit. Trusts Act, 1869, s. 12, *post.*

(*l*) 46 & 47 Vict. c. 61.

(*m*) Sect. 40.

(*n*) The Acts relating to the redemption and purchase of land-tax are 42 Geo. III. c. 116; 43 Geo. III. c. 51; 45 Geo. III. c. 77; 50 Geo. III. c. 58, s. 2; 52 Geo. III. c. 143, s. 6; 53 Geo. III. c. 123; 54 Geo. III. c. 173; 57 Geo. III. c. 100; 4 Geo. IV. c. 19, s. 13; 4 & 5 Will. IV. c. 11, s. 5; *ibid.* c. 60, ss. 2, 5; 7 Will. IV. & 1 Vict. c. 17, ss. 4, 5; 1 & 2 Vict. c. 58; 16 & 17 Vict. c. 74; *ibid.* c. 117.

(*o*) 42 Geo. III. c. 116, ss. 9, 20.

(*p*) Now the Commissioners of the Treasury: 1 & 2 Vict. c. 58, s. 1.

persons holding under demise from them (*q*). But not unless they have an estate or interest in the land on which the land tax is charged (*r*).

Personal property invested in the funds, &c., and subject to be laid out in the purchase of lands for the benefit of a corporation or trustees for charitable or public purposes may, with the consent of two or more commissioners, be applied in the redemption of land tax on estates belonging to such corporation or trustees (*s*).

Redemption money how provided.

Land tax on lands settled to charitable uses for the benefit of any parish or place may, with the approbation of two justices, be redeemed out of the rates (*t*). And trust property applicable under any Act of Parliament, deed, will, or decree of any Court to any charitable purposes for the benefit of any parish or place may be applied in redemption of land tax on lands settled to charitable uses for the benefit of such parish or place which shall be charged with an annuity equal to the trust property so applied (*u*).

Redemption out of rates on land held for benefit of parish.

Governors and directors of hospitals and other charitable institutions may apply legacies and donations, not directed to be applied in any particular manner, in redemption of land tax on lands belonging to the institution (*x*).

Hospitals.

And money may be given by will or otherwise for redeeming the land tax on lands settled to charitable uses (*y*).

Gifts by will for redemption of land tax.

Corporations and trustees for charitable or public purposes may, for the purpose of redeeming land tax, sell, and by deed indented and inrolled or registered, as prescribed by the Act, convey lands, whether freehold, copyhold, or leasehold (except at a rack rent), whether charged or not with payment of land tax, and, if charged, then freed and discharged therefrom. They may also raise the money required to redeem the land tax by mortgage or by the grant of a rent-charge. But the sale or mortgage must be of, or the rent-charge granted upon, the land subject to the land tax or other lands settled to the same uses (*z*).

Sale, &c., of land for redemption of land tax.

For the same purpose they may enfranchise copyholds and sell heriots, fee farm rents, chief rents, or quit rents (*a*).

Enfranchisement of copyholds.

(*q*) 42 Geo. III. c. 116, s. 21; see also sect. 93. Provision is also made for the purchase of redeemed land-tax from leasees and copyhold tenants: sect. 86.

(*r*) 16 & 17 Vict. c. 117, s. 1.

(*s*) 42 Geo. III. c. 116, s. 41.

(*t*) Sect. 46.

(*u*) Sect. 47.

(*x*) Sect. 48.

(*y*) Sect. 50.

(*z*) Sect. 69; 57 Geo. III. c. 100, s. 16;

and see *Widborne v. Ecclesiastical Commissioners*, W. N. 1877, 226. As to sales by the charity for the relief of poor widows and children of clergymen, see 42 Geo. III. c. 116, s. 77. And as to supplementing the deficiency where the proceeds of sale are insufficient, see sect. 37 of the same Act. As to the sale of land by corporations, &c. for the redemption of land-tax on livings in their patronage, see 50 Geo. III. c. 58, s. 2.

(*a*) 42 Geo. III. c. 116, s. 70.

Sale by one corporation to another. And the sale may be made to other corporations or charitable trustees (*b*), and corporations and trustees may lay out trust money in the purchase of lands so sold by other corporations or trustees (*c*).

Consent of commissioners. Sales, enfranchisements, mortgages, or grants of rent-charges must be made with the consent and subject to the directions of the Commissioners, two of whom must execute the deed (*d*).

Incidence of charges, &c. The Commissioners may determine how charges and rents payable in respect of lands belonging to corporations or trustees for charitable or public purposes sold for the redemption of land tax shall be borne (*e*).

Surplus proceeds. Surplus funds not required for the redemption of land tax are, if not exceeding £1,000, to be transferred into the names of two trustees, to be nominated by the corporation or charitable trustees, and to be applied in payment of debts affecting the lands or in purchase of other lands (*f*).

The Commissioners for the Reduction of the National Debt may order surplus stock standing to the account of corporations or trustees for charitable or public purposes to be sold for payment of the costs of sales, mortgages, or grants (*h*), or for carrying out contracts for the redemption of land tax (*i*).

Land tax on livings, &c. Corporations, whether ecclesiastical or lay, and trustees for charitable or other public purposes, may redeem the land tax on livings in their patronage on transfer of stock producing a dividend equal in amount to the land tax (*k*), or they may provide for such redemption by sale of hereditaments, or they may apply trust funds or legacies or donations for that purpose (*l*). And they may declare in the redemption contracts that the lands redeemed shall not be subject to a rent-charge in their favour (*m*). But sales must be approved by the Commissioners (*n*).

Queen Anne's Bounty. The Governors of Queen Anne's Bounty may lay out money in redeeming land tax on livings and in purchasing rent-charges granted by incumbents (*o*); and trustees of property for the benefit of the poor clergy may lay out trust money in redeeming land tax on lands, tithes, or other profits belonging to livings (*p*).

Property given for benefit of poor clergy. Trustees of property given for the benefit of the poor clergy may contract for the redemption of land tax on lands, tithes, and other profits arising from livings (*q*).

(*b*) 53 Geo. III. c. 123, s. 24.

(*c*) Sect. 25.

(*d*) 42 Geo. III. c. 116, s. 76.

(*e*) Sects. 82, 83. Provisions with regard to copyholds are contained in sects. 84, 85, 89, 93, 94.

(*f*) 54 Geo. III. c. 173, ss. 8 and 9. See also 42 Geo. III. c. 116, s. 100.

(*h*) 57 Geo. III. c. 100, s. 18.

(*i*) Sect. 19.

(*k*) Sect. 12.

(*l*) Sect. 13.

(*m*) Sect. 14.

(*n*) Sect. 15.

(*o*) 42 Geo. III. c. 116, s. 44.

(*p*) Sect. 45.

(*q*) Sect. 16.

Colleges of Oxford and Cambridge, and the colleges of Eton and Winchester, and corporations and trustees for charitable or public purposes may contract for the redemption of land tax on livings in their patronage where it has not been redeemed by the incumbent (*r*), and the funds may be provided by sale of land or grant of a rent-charge (*s*).

Oxford and
Cambridge
Colleges, &c.

The redemption of land tax frees the land from all future assessments in respect of land tax, and the redeemed land tax merges in the estate (*t*).

Redeemed
land tax
merges in
estate.

Investment.

Charity funds requiring investment should be invested by the trustees in the manner pointed out by the instrument creating the trust, or in such manner as is permitted by law.

Investment.

Trustees of charities come within sect. 11 of 23 & 24 Vict. c. 38, which authorizes trustees, having power to invest their trust funds upon Government securities or upon Parliamentary stocks, funds or securities, to invest them in any investments in which cash under the control of the Court may from time to time be invested (*u*). And this power is not affected by prohibitive words in the instrument declaring the trusts (*x*).

23 & 24 Vict.
c. 38, s. 11.

It follows that the trustees may sell out with a view to re-investment, even though there is no express power to vary investments (*y*).

Varying
investments.

And the power of the Court with regard to the investment of cash under its control is not affected by any limitation to the selection of investments imposed by the instrument of foundation, even though it be a private Act of Parliament (*z*).

Power of
Court not
affected by
private Act.

A power to invest in new three per cent. stock and consolidated and reduced three per cent. stock, or generally in three per cent. stock, authorizes an investment in $2\frac{3}{4}$ per cent. consolidated stock (*a*).

$2\frac{3}{4}$ per cents.

If by reason of the conversion or exchange of stock in pursuance of the National Debt (Conversion) Act, 1888 (*b*), any question

Questions
arising in
connection

(*r*) Sect. 17; 57 Geo. III. c. 100, s. 12.

(*s*) 42 Geo. III. c. 116, s. 78.

(*t*) Sect. 43; 16 & 17 Vict. c. 117, s. 2.

(*u*) *Re Clergy Orphan Corporation*, L. R. 18 Eq. 280. As to the investments in which cash under the control of the Court may be invested, see R. S. C. 1883, Ord. XXII. r. 17, which came into force on the 26th of Nov. 1888. See also, with regard to stock converted or exchanged under the National Debt (Conversion) Act, 1888 (51 Vict. c. 2), sect. 27 of that Act.

(*x*) *Re Wedderburn's Trusts*, 9 Ch. D. 112.

(*y*) *Re Clergy Orphan Corporation*, *supra*.

(*z*) *Re Birmingham Blue-coat School*, L. R. 1 Eq. 632.

(*a*) National Debt (Conversion) Act, 1888 (51 Vict. c. 2), s. 19.

(*b*) Under sect. 7 of this Act, dissent from the conversion under Part I. of the Act of new 3l. per cent. stock standing in the names of the Official Trustees of Charitable Funds was to be signified by those trustees on the request of the trustees or persons acting in the administration of the

with conversion of consols, &c.

arises as to the powers or duties of any trustee, or as to the application of the dividends or capital of any stock, and in particular as to the cases in which and extent to which capital may be applied towards meeting any deficiency of income, the Charity Commissioners may, as regards charities within their jurisdiction, either on their own motion or on application by order determine such question (c).

In other cases such question is determinable by the High Court in England or Ireland, or the Court of Session in Scotland (d).

Applications to the Court.

But in case of a charity within the jurisdiction of the Charity Commissioners an application may not be made to the Court without a certificate from them (e).

The re-investment in India $3\frac{1}{2}$ per cent. stock of funds invested in $2\frac{3}{4}$ per cents. was objected to by the Attorney-General on the ground that it was redeemable at par, and a petition for the purpose of obtaining such re-investment was adjourned into Chambers in order that the scheme (which was an old one) regulating the charity might be modernised and a change of investment considered (f).

Trustee Act, 1888, does not apply to official trustees. Investment in savings banks.

The Trustee Act, 1888 (g), does not apply to the Official Trustees of Charitable Funds.

By 26 & 27 Vict. c. 87 (h), the trustees or treasurers of any charitable or provident institution or society, or charitable donation or bequest for the maintenance, education, or benefit of the poor in Great Britain or Ireland, are empowered to invest with the approval of the Commissioners for the Reduction of the National Debt or the Comptroller General acting under them, and under such regulations as shall be prescribed by them in that respect, the funds of such institution or society without restriction as to amount in the funds of any savings bank duly established, and also without the approval of the Commissioners to invest from time to time, if the trustees and managers of such savings bank shall be willing to receive the same, any part of the funds of such institution or society to the amount of 100% per annum. But in the last case, the amount invested must not at any time exceed 300% exclusive of interest.

charity on or before the 12th of April, 1888. And under sect. 9, sub-sect. (2), an exchange in pursuance of Part II. of the Act of consolidated 3% per cent. stock or reduced 3% per cent. stock standing in the name of the Official Trustees of Charitable Funds was to be made on the request or with the consent of the trustees or persons acting in the administration of the charity. And by Treasury Regulations made under that section, the Charity Commissioners were

empowered to consent to such exchange on behalf of the trustees unless dissent was signified before the 31st of May, 1888. For these Regulations, see the London Gazette, 1888, p. 2139.

(c) Sect. 28. sub-s. (2).

(d) *Ibid.* sub-s. (1).

(e) *Ibid.* sub-s. (2).

(f) *Re Milne's Charity*, Times, Jan. 28, 1889.

(g) 51 & 52 Vict. c. 59, s. 1, sub-s. (3).

(h) Sect. 32.

The receipt of the treasurer, trustee, or other officer for the time being of any such charitable or provident institution or society, apparently authorized to require payment, is a sufficient discharge to the savings bank (i).

Members of charitable institutions are not liable to any penalty, forfeiture, or disability expressed in the rules of the institution by being a depositor in a savings bank (k).

The Court may authorize the loan of the funds of a charity on mortgage (l). Investment on mortgage.

By 33 & 34 Vict. c. 34, corporations and trustees in the United Kingdom holding moneys in trust for any public or charitable purpose, are empowered to invest on any real security, authorized by or consistent with the trusts on which such moneys are held, without being deemed thereby to have acquired or become possessed of any land within the meaning of the laws relating to mortmain, or of any prohibition or restraint against the holding of land by such corporations or trustees contained in any charter or Act of Parliament; and no contract for or conveyance of any interest in land made *bonâ fide* for the purpose only of such security is void by reason of any non-compliance with the conditions and solemnities required by 9 Geo. II. c. 36 (n). 33 & 34 Vict. c. 34. Provided that in every case in which the equity of redemption of the premises comprised in any such security shall become liable to foreclosure, or otherwise barred or released, the same shall be thenceforth held in trust to be sold and converted into money, and shall be sold accordingly; and if any decree shall be made in any suit for the purpose of redeeming or enforcing such security, such decree shall direct a sale (in default of redemption) and not a foreclosure of such premises (o).

“Real security” in the Act includes all mortgages or charges, legal or equitable, of or upon lands or hereditaments of any tenure, or of or upon any estate or interest therein, or any charge or incumbrance thereon; and “conveyance” includes all grants, releases, transfers, assignments, appointments, assurances, orders, surrenders, and admissions whatsoever operating to pass or vest any estate or interest, at law or in equity, in the premises comprised in any real security (p). Interpretation.

Power to invest trust money in real securities authorizes an investment on mortgage of property held for an unexpired term of Long leasehold security.

(i) Sect. 34.

(k) Sect. 35.

(l) This was done by Romilly, M.R., in *Att.-Gen. v. Gibson, Ex parte Lushington, Re Lady Prior's Charity*, July 21, 1853. The mortgage was for 50,000*l.* upon an estate in Northamptonshire. Lewin on

Trusts, 541, 8th edit.

(n) Sect. 1. 9 Geo. 2, c. 36 is now replaced by Part II. of the Mortm. and Charit. Uses Act, 1888, *post*.

(o) Sect. 2.

(p) Sect. 3.

not less than 200 years, and not subject to any reservation of rent greater than 1s. a year, or to any right of redemption, or to any condition for re-entry except for non-payment of rent (*q*). But not where the terms of the trust expressly forbid it (*r*).

Application of
Mortmain and
Charit. Uses
Act, 1888, to
mortgages to
charity
trustees.

Mortgages to charity trustees must, however, satisfy the provisions of Part II. of the Mortmain and Charitable Uses Act, 1888 (*s*). But the proviso for redemption is not a condition for the benefit of the assurator within the meaning of sect. 4, sub-sect. (3) of that Act (*t*).

Investment in
purchase of
land.

The Court has not in general allowed money belonging to a charity to be invested in the purchase of land (*u*), regarding it as contrary to the policy of 9 Geo. II. c. 36 (*x*).

Authorized
when
beneficial.

Inasmuch, however, as, if the conveyance satisfies the statutory requirements, there is nothing contrary to the Act in purchasing land with charity moneys, such an investment, if plainly beneficial, and if there were no other objection to it, might be made even by the trustees (*y*).

And the Court will sometimes make such orders in cases where they are necessary, as where a school requires to be enlarged (*z*).

Upon a petition under an information for the management of a charity, that certain mortgages might be paid off, and improvements and repairs effected in a schoolhouse, and that land might be purchased for that purpose, it was held that the objects of the petition, being of a mixed nature, and all manifestly for the benefit of the charity, it would not, under the circumstances, be contrary to the policy of 9 Geo. II. c. 36 to allow the purchase of the land (*a*).

Purchase
under special
conditions not
approved.

The Court does not approve of a purchase of land by charity trustees under very special conditions of sale (*b*).

Purchase of
sites under
Charit. Trusts
Act, 1853.

By sect. 27 of the Charitable Trusts Act, 1853 (*c*), trustees of charities (and as to incorporated trustees without licence in mortmain) (*d*) are enabled to purchase sites for the erection of any house or building with or without garden, playground, or otherwise, from persons under disability. And the section incorporates the Lands Clauses Consolidation Act, 1845 (*e*).

(*q*) Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 9.

(*r*) *Ibid.* s. 12, sub-s. (2).

(*s*) Sect. 10, sub-sect. (1), *post*.

(*t*) *Doe v. Hawkins*, 2 Q. B. 212.

(*u*) *Mather v. Scott*, 2 Keen, 172; *Att.-Gen. v. Wilson*, *ibid.* 680.

(*x*) Now Part II. of the Mortm. and Charit. Uses Act, 1888, *post*.

(*y*) See *Vaughan v. Farrer*, 2 Ves. Sen. at p. 188.

(*z*) *Att.-Gen. v. Earl of Mansfield*, 14 Sim. 601; *Re Honnor's Trust*, 3 W. R.

429. Cf. also pp. 250, 251, *ante*, with regard to the removal of sites.

(*a*) *Att.-Gen. v. Wardens, &c. of Highgate School*, 14 L. J. Ch. 425.

(*b*) *Ex parte Governors of Christ's Hospital*, 2 H. & M. 166.

(*c*) *Post*.

(*d*) Charit. Trusts Amend. Act, 1855, s. 41, *post*. But with regard to the acquisition of such land, Part II. of the Mortm. and Charit. Uses Act, 1888, must be complied with.

(*e*) 8 & 9 Vict. c. 18.

Power to purchase a site is sometimes given by a special Act of Parliament (*f*). Special Act.

The Charity Commissioners, when they make an order for the sale (*g*) or exchange (*h*) of charity lands, are required to give directions for the investment of the purchase-money or money received by way of equality of exchange (*i*). So, also, when they direct the sale of a rent-charge, annuity, or other periodical payment charged on land for the benefit of a charity (*k*). Investment of proceeds of sale.

Orders of the Commissioners for the investment of money arising from a sale, exchange, or partition, are to be carried into effect by the trustees or persons administering the charity (*l*).

Principal moneys belonging to a charity directed to be paid to the Official Trustees of Charitable Funds, are to be paid to their account at the bank, and, subject to the order of the Court, or judge, or of the Board, directing the payment, invested in the public funds (*m*). Investment of funds held by Official Trustee.

Any incorporated charity, or the trustees of a charity, whether incorporated or not, may, with the consent of the Charity Commissioners, invest money arising from a sale, exchange, or partition in the purchase of land, and hold such land without licence in mortmain (*n*). Re-investment in purchase of land.

Church trustees may invest funds in their hands in Government or real securities and accumulate the income thereof or otherwise deal with such funds as they think expedient, subject to the provisions of the Compulsory Church Rate Abolition Act, 1868 (*o*). Church trustees.

Money in Court under Lands Clauses Act.

The purchase-money or compensation payable under the Lands Clauses Consolidation Act, 1845 (*p*), in respect of the lands, whether purchased by agreement or taken compulsorily, must, if amounting to or exceeding £200, be paid into the bank to the account of the Paymaster-General (*q*), or, if under £200 but exceeding £20, into the bank or to the trustees (*r*). Purchase-money or compensation under Lands Clauses Act.

(*f*) *Governors of St. Thomas' Hospital v. Corporation of London*, 11 L. T. N. S. 520; *Re Sion College*, 57 L. T. N. S. 743.

(*g*) *Ante*, p. 253.

(*h*) *Ante*, p. 267.

(*i*) Charit. Trusts Act, 1853, s. 24, *post*.

(*k*) *Ibid.* s. 25.

(*l*) Charit. Trusts Amend. Act, 1855, s. 36, *post*.

(*m*) *Ibid.* s. 23, and note thereto, *post*. As to what investments are authorized,

see *ante*, p. 275.

(*n*) Charit. Trusts Amend. Act, 1855, s. 35, *post*. But with regard to the acquisition of such land, the provisions of Part II. of the Mortm. and Charit. Uses Act, 1888, must be observed.

(*o*) 31 & 32 Vict. c. 109, s. 9.

(*p*) 8 & 9 Vict. c. 18. The material portions of this Act will be found in App. I., *post*.

(*q*) Sect. 69.

(*r*) Sect. 71.

The sanction of the Charity Commissioners to payment into Court under this Act is not required (*s*).

Permanent investment under sect. 69.

Money paid into Court remains deposited until applied to one or more of the following purposes: (1) In the purchase or redemption of land tax (*t*), or the discharge of any debt or incumbrance affecting the land in respect of which the money was paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; (2) in the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner as the lands in respect of which such money shall have been paid stood settled; (3) in removing or replacing buildings taken under the Act or injured by the proximity of the works, or substituting others in their stead, if the money was paid in respect of such buildings; (4) in payment to any party becoming absolutely entitled (*u*).

Incumbrance.

The purchase-money of freeholds may be invested in the purchase of a term of years subsisting in other freeholds vested in the same persons, such term being substantially an incumbrance on the inheritance (*x*).

Alterations and re-building.

The funds may also be directed to be applied in rebuilding (*y*), erecting temporary buildings (*z*), or making alterations (*a*). In one case they were applied in improving the water supply (*b*).

Application as "capital money" under Settled Land Act, 1882.

It has been held that purchase-money of charity land paid into Court under the Lands Clauses Act is "money liable to be laid out in the purchase of land to be made subject to a settlement" within sect. 32 of the Settled Land Act, 1882 (*c*), and may be invested or applied as "capital money" arising under that Act (*d*).

With regard to this decision it is by no means clear how, seeing that, according to the definition in the Act (*e*), it is essential to a settlement that there shall be a limitation to persons by way of

(*s*) See cases cited in n. (*a*) to sect. 17 of the Charit. Trusts Act, 1853, *post*.

(*t*) *Re L. B. & S. C. Ry. Co.*, 18 Beav. 608; *Re Bethlehem Hospital*, L. R. 19 Eq. 467; *Ex parte Hospital of St. Katharine*, 17 Ch. D. 378.

(*u*) Lands Clauses Consolidation Act, 1845, s. 69.

(*x*) *Re Manchester, &c. Ry. Co.*, 2 Jur. N. S. 31; *Ex parte Bishop of London*, 2 De G. F. & J. 14; *Ex parte Corporation of Sheffield*, 21 Beav. 162.

(*y*) *Ex parte Thorner's Charity*, 12 L. T. O. S. 266; *Ex parte Dean and Chapter of Canterbury*, 10 W. R. 505; *Re Partington's Trusts*, 11 W. R. 160; *Ex parte Jesus Coll., Cambridge*, 50 L. T.

N. S. 583; *Ex parte Parson, &c. of St. Alphege*, 55 L. T. N. S. 314, where payment out was directed on an undertaking to expend in rebuilding.

(*z*) *Re St. Thomas' Hospital*, 11 W. R. 1018.

(*a*) *Re Buckinghamshire Ry. Co.*, 14 Jur. 1065; *Re Trustees of Lymington Baptist Chapel*, W. N. 1877, 226.

(*b*) *Re Lathropp's Charity*, L. R. 1 Eq. 467.

(*c*) 45 & 46 Vict. c. 38.

(*d*) *Re Byron's Charity*, 23 Ch. D. 171; *Re Bethlehem and Bridewell Hospitals*, 30 Ch. D. 541.

(*e*) Settled Land Act, 1882, s. 2, sub-s. (1).

succession, land purchased with the proceeds of sale of charity land can be said to be "subject to a settlement" within sect. 32 (f).

The Court does not usually direct the purchase-money to be laid out in the purchase of land of different tenure, as, for instance, the purchase-money of freeholds to be applied in purchasing leaseholds.

Purchase of land of different tenure.

Where, however, a freehold chapel vested in trustees had been taken, and difficulty was experienced in finding a suitable freehold tenement as a substitute, and the trustees were absolutely entitled, the Court permitted the money to be applied in the purchase of a leasehold chapel held for a term of which sixty years were unexpired (g).

But the purchase-money of freeholds may be directed to be laid out in enfranchising copyholds settled upon the same trusts, that being considered to be an investment in the purchase of freeholds (h).

When a re-investment in land is authorized the conveyance to the charity of the land purchased requires enrolment under sect. 4, sub-s. (9), of the Mortmain and Charitable Uses Act, 1888 (i).

Conveyance must be enrolled.

Applications for the investment of funds in Court under the Lands Clauses Act are applications in a "suit or matter actually pending" within the meaning of sect. 17 of the Charitable Trusts Act, 1853, and the sanction of the Charity Commissioners to such applications is accordingly not required (k).

Sanction of Charity Commissioners.

A number of cases have been decided as to how far charity trustees are persons "becoming absolutely entitled" to funds in Court under this Act. From these it appears that charity trustees who have no power of sale are not entitled to obtain payment out as being "absolutely entitled," unless they obtain the sanction of the Charity Commissioners (l).

Parties "absolutely entitled." Charity trustees.

And it seems to be doubtful whether even trustees having a power of sale are persons "absolutely entitled" (m). And even if

(f) See Wolstenholme & Turner's Settled Land Act (2nd ed.), p. 50.

(g) *Re Rehoboth Chapel*, L. R. 19 Eq. 180. And see *Ex parte Master, &c. of Trinity Coll., Cambridge*, 18 L. T. N. S. 849; *Ex parte Macaulay*, 23 L. J. Ch. 815.

(h) *Re Cheshunt Coll.*, 1 Jur. N. S. 995. And see *Dixon v. Jackson*, 25 L. J. Ch. 588.

(i) *Post*. See *Re Governors of Christ's Hospital*, 12 W. R. 669.

(k) See n. (a) to that section, *post*. With regard to procedure and costs, see *post*, pp. 341, 342, 355.

(l) *Re Faversham Charities*, 10 W. R.

291; *Ex parte Governors, &c. of Norfolk Clergy*, W. N. 1882, 53; and see next note.

(m) *Ex parte Trustees of Tidd St. Giles' Charity*, 17 W. R. 758; *Re Spurstowe's Charity*, L. R. 18 Eq. 279. See also *Re Lathropp's Charity*, L. R. 1 Eq. 467; *Re Rehoboth Chapel*, L. R. 19 Eq. 180; *Ex parte Parson, &c. of St. Alphage*, 55 L. T. N. S. 314; *Ex parte Haberdashers' Co.*, 55 L. T. N. S. 758. The following analysis of the cases with regard to payment out to charity trustees may be useful:—In *Ex parte Trustees of Tidd St. Giles' Charity*, *supra*, Stuart, V.-C., and in *Re Spur-*

they are, it appears that the Court still has a discretion to refuse to order payment out to them. The result is, that in every case the sanction of the Charity Commissioners to the application should be obtained.

Official
Trustees of
Charitable
Funds.

A petition for payment or transfer to the Official Trustees of Charitable Funds is a petition for payment out to persons becoming absolutely entitled (*p*).

Interim
investment.

Applications by charity trustees for the interim investment of charity funds in Court under the Lands Clauses Act (*q*), and for the payment of dividends to them, do not require the sanction of the Charity Commissioners (*r*).

Payment of
dividends.

The dividends on a fund in Court will be ordered to be paid to the charity trustees (*s*). The direction may either be for payment

slow's Charity, *supra*, Malins, V.-C., ordered payment out to charity trustees without requiring the sanction of the Charity Commissioners. In neither of these cases did it appear whether the trustees had or had not a power of sale. In the recent case of *Re Parson, &c. of St. Alphage, supra*, a petition was presented by the parson, churchwardens, and parishioners of St. Alphage for payment out of 57*l.*, upon their undertaking to expend it, or the greater portion of it, in rebuilding the porch of a church. The petitioners had no power of sale, and the consent of the Charity Commissioners had not been obtained. Chitty, J., doubted whether the order as asked for could be made, but, as the respondents did not oppose, ordered payment out to the petitioners upon production of the Charity Commissioners' certificate that 500*l.* had been expended in rebuilding the porch. See also *Re Lathropp's Charity*, L. R. 1 Eq. 467. On the other hand, it was held by Wood, V.-C., in *Re Faversham Charities*, 10 W. R. 291, that charity trustees who had no power of sale could not obtain payment out without the sanction of the Charity Commissioners. And in the case of *Ex parte Governors, &c. of Norfolk Clergy*, W. N. 1882, 53, Fry, J., declining to follow *Re Spurstowe's Charity*, refused to order payment out on the application of the governors of the charity, who had no power of sale, but directed the fund to be invested, and the dividends to be paid to the treasurer of the charity for the time being. It appears, therefore, that *Ex parte Trustees of Tvd St. Giles' Charity* and *Re Spurstowe's Charity, supra*, are not to be regarded as authorities that trustees who have no power of sale are entitled to have payment out without the sanction of the Commissioners. With regard to trustees who have a

power of sale, it will be observed that the cases draw a distinction between trustees who have not, and trustees who have, a power of sale; and while they decide that in the former case payment out cannot be obtained without the sanction of the Commissioners, they decide nothing as to the latter. And, indeed, it may be said that if and so far as *Ex parte Trustees of Tvd St. Giles' Charity*, and *Re Spurstowe's Charity*, decided that trustees having a power of sale are entitled to payment out without the assent of the Commissioners, they have not been dissented from. However, in the recent case of *Re Smith*, 40 Ch. D. 386, which related to private trustees, it was held that, even though there may be jurisdiction to order payment out to trustees with a power of sale as persons "absolutely entitled," they are not entitled to such an order as a matter of right, and it is in the discretion of the Court to refuse it. See also *Re Hobson's Trusts* 7 Ch. D. 708; and *Re Ward's Estates*, 28 Ch. D. 100, which merely decided that in those particular cases the order might reasonably be made. It seems, therefore, that in all cases the safer course is to obtain the consent of the Charity Commissioners to an application for payment out of Court.

(*p*) *Re Estates of Bristol Free Grammar School*, 47 L. J. Ch. 317; *Ex parte Trustees of Bishop Monk's Horfield Trust*, 29 W. R. 462; and see *post*, pp. 355, 356.

(*q*) Sect. 70.

(*r*) See *n. (a)* to sect. 17 of the Charit. Trusts Act, 1853, *post*, and cases there cited.

(*s*) *Re Andenshaw School*, 1 N. R. 255; *Re Shakespeare Walk School*, 12 Ch. D. 178. See *Att.-Gen. v. Brandreth*, 1 Y. & C. C. C. 200; *Reeve v. Att.-Gen.*, 3 Hare, at p. 198.

to the existing trustees of the charity by name, or any two of them, or to the trustees for the time being (so as to prevent the necessity of obtaining a new order when fresh trustees are appointed (*t*)), or any two of them (*u*), or to the treasurer of the charity; and where there was no treasurer, the Court ordered payment of dividends to the secretary of the trustees of the charity by name, and to his successors the secretaries for the time being of the trustees (*x*).

Money paid into Court under the Lands Clauses Act as the purchase-money of disused burial grounds will be invested, and the dividends paid to the person who would have been entitled to the burial fees if the burial grounds had continued to be used. Accordingly, if such fees were receivable by the rector, the dividends will be paid to him (*y*); and similarly if they were received by trustees (*z*).

Purchase-money of disused burial grounds.

Registration, &c.

By 52 Geo. III. c. 102, a memorial or statement of the real and personal estate, and the income, investments, and objects of charities and charitable donations for the benefit of any poor or other persons in any place in England or Wales, with the names of the founders or benefactors, and the persons having custody or control of the deeds, wills, and other instruments whereby such charities and charitable donations were founded or increased, and of the trustees, feoffees, or possessors of such real or personal estate, was directed to be registered by the trustees, feoffees, or possessors, or some or one of them, in manner and form contained in the schedule to the Act, in the office of the clerk of the peace of the county or city or town, being a county in itself, within which such poor or other persons were. The memorial or statement was to be signed by the persons causing the same to be registered, and left in the office of the clerk of the peace, who was directed forthwith to transmit a duplicate or copy of the same to the Enrolment Office (*a*) of the Court of Chancery (*b*).

52 Geo. III. c. 102. Registration.

(*t*) The company would not be liable for the costs of a fresh application in such a case: *Re Andenshaw School*, 1 N. R. 255.

(*u*) *Re Collins' Charity*, 20 L. J. Ch. 168; *Att.-Gen. v. Brickdale*, 8 Beav. 223; *Milne v. Gilbert*, W. N. 1875, 128; and see Set. 4th ed. p. 89. See also *Ex parte Trustees of Shrewsbury Hospital*, 9 Hare, App. xlv., where the dividends were ordered to be paid to the trustees by name, and the survivors and survivor of them, and the trustees for the time being. With regard to payment of divi-

dends to a corporation sole, see *Ex parte Archbishop of Canterbury*, 2 De G. & Sm. 365; *Re Pearce*, 24 Beav. 491; *Att.-Gen. v. Vint*, 3 De G. & Sm. 704.

(*x*) *Re Codrington's Charity*, L. R. 18 Eq. 658.

(*y*) *Ex parte Rector of Liverpool*, L. R. 11 Eq. 15; *Ex parte Rector of St. Martin's, Birmingham*, *ibid.* 23.

(*z*) *Re St. Pancras Burial Ground*, L. R. 3 Eq. 173.

(*a*) Now the Enrolment Department of the Central Office.

(*b*) Sect. 1.

Future
charitable
gifts.

And sect. 2 provides that "Wherever any such charity or charitable donations shall be founded, established, made or benefited, increased or secured by any deed, will, or other instrument hereafter to be made or executed by any person or persons, then a like memorial or statement, according to the directions hereinbefore contained, shall be registered and left and transmitted as aforesaid by such person or persons as are hereinbefore mentioned, within 12 months after the decease of such person or persons by whom any such will, deed or deeds, or other instrument shall have been made or executed."

Registers.

The clerks of the peace are directed to provide proper books in which the registers shall be made, and such books must be kept for public use and inspection with a correct index (*c*).

If the persons to be benefited are not wholly within one county notice must be given in the London Gazette (*d*).

Remedy for
default.

If the directions as to registration are not complied with a petition complaining thereof may be presented by any two or more persons interested in the charity or charitable donation (*e*). But proceedings under the Act cannot decide any right or title (*f*).

Searches and
copies.

The clerks of the peace are required to make searches for and give copies of the registers to any person (*g*).

Fees.

The fees of the clerks of the peace for registration and giving copies of entries are 1s. for every 100 words. In addition to this, the cost of any notification in the London Gazette, and 10s. for drawing and inserting the notification and for sending the copy for enrolment in the High Court, have to be paid (*h*).

Extension of
time and
costs.

Further time for registration is allowed in certain cases (*i*), and provision is made for the costs of registration (*k*).

Charities not
requiring
registration.

The Act does not extend to any charity or charitable donation not issuing out of or secured upon lands, tenements, or hereditaments, or directed by the founder or donor to be secured thereon, or to be permanently invested in government or public stocks or funds, or to any charitable donation which by the direction of the donor or by the lawful rules of any charitable institution may be wholly or in part expended in and about the charitable purpose for which the same may have been given, at the discretion of the governors, directors, managers, or trustees of such charitable institution (*l*).

Nor does the Act extend to any hospital, school or other charitable institution founded, improved, or regulated by the Crown or a

(*c*) Sect. 3.
(*d*) Sect. 4.
(*e*) Sect. 5.
(*f*) Sect. 6.
(*g*) Sect. 7.

(*h*) Sect. 8.
(*i*) Sect. 9.
(*k*) Sect. 10.
(*l*) *Ibid.*

special Act of Parliament, or to any charitable donation under the superintendence of such hospital, school or institution, or to the governors of the corporation of the charity for the relief of poor widows and children of clergymen, or to friendly societies, or to Oxford or Cambridge Universities, or any college or hall thereof, or to any charitable bequest, devise, gift or foundation under the control thereof, or to the Radcliffe Infirmary, or to Westminster, Eton, or Winchester, or to any cathedral or collegiate church, or to the Charterhouse, or to the Corporation of the Trinity House of Deptford Strond, or to charities for the benefit of Jews (*m*) or Quakers (*n*).

Nor does the Act extend to any charity or charitable donation or foundation, accounts whereof have been directed to be annually passed in the High Court; or to charities, of which the gross income does not exceed 40*s.*, if a memorial thereof was within six months after the passing of the Act deposited with the minister of the parish (*o*).

Several charities held or managed by one corporation or guild may be stated in one memorial (*p*).

By the Local Government Act, 1888 (*q*), the registration of charitable gifts under the above Act is transferred to the County Councils. Transfer to
County
Councils.

By the Places of Religious Worship Registration Act, 1855 (*r*), every place of meeting for religious worship of Protestant Dissenters, Roman Catholics, and Jews, not already certified, or of any other body or denomination of persons, may be certified to the Registrar-General of Births, Deaths, and Marriages (*s*), who must record all places so certified (*t*). Places of meeting already certified, save those certified under 15 & 16 Vict. c. 36, which is repealed by the Act (*u*), may be certified to the Registrar-General, and must be recorded by him (*x*). A fee of 2*s.* 6*d.* must be paid with the certificate to the superintendent registrar (*y*). Registration
of places of
religious
worship.

Notice must be given to the Registrar-General of every certified place of meeting becoming disused for the purposes for which it was certified (*z*). Lists of certified places must be printed, and sent to the superintendent registrars, and must be open to inspection on payment of the prescribed fee (*a*).

Whenever any certified place of religious worship ceases to be used as such, the Registrar-General must cancel the record of certification, and give public notice thereof by advertisement (*b*).

(*m*) Sect. 11.

(*n*) Sect. 12.

(*o*) Sect. 13.

(*p*) Sect. 14.

(*q*) 51 & 52 Vict. c. 41, s. 3, sub-s. (xv.).

(*r*) 18 & 19 Vict. c. 81.

(*s*) Sect. 2.

(*t*) Sect. 3.

(*u*) Sect. 1.

(*x*) Sect. 4.

(*y*) Sect. 5.

(*z*) Sect. 6.

(*a*) Sect. 7.

(*b*) Sect. 8.

Sect. 9 provides that certified places of worship are exempted from the Charitable Trusts Act, 1853 (*c*).

The Act does not affect churches and chapels of the Established Church (*d*).

A certificate of a place of worship having been certified can be obtained on payment of the prescribed fee, and is receivable in evidence (*e*).

The Act does not extend to Scotland or Ireland (*f*).

Mandamus to compel registration.

A mandamus lies in case of refusal to register and certify dissenting meeting-houses (*g*).

List of parochial charities, &c. to be kept by vestry.

It is provided by 1 & 2 Will. IV. c. 60 (*h*) that the vestry in any parish adopting the Act shall cause to be made out once in every year a list of the freehold, copyhold, and leasehold estates, and of all charitable foundations and bequests belonging to the parish and under the control of the vestry. The list must contain an account of the place where the estate or charitable foundation is situate, the mode of investment of the bequest, and must specify the yearly rental and the particular appropriation thereof, the names of the persons partaking of the benefit (except where the benefit is allotted to the poor of the parish generally), and to what amount in each case, the persons in whom the estates are vested, and the trustees for each charity; and the list must be open for the inspection of the ratepayers at the office of the vestry clerk at the same time with the accounts audited under the provisions of the Act.

Metropolitan vestries.

Every metropolitan vestry must, once at least in every year, cause to be made out a list of all charitable foundations and bequests belonging to the parish and under the control of the vestry, and the list must contain a detailed account of the place where the charitable foundation is situate, or the investments of the bequest, with the yearly rental and particular appropriation thereof, and the names of the persons partaking of the benefit (except where the benefit is allotted for the poor of the parish generally), and to what amount, and the names and descriptions of the charity trustees; and such lists must be open for the inspection of the ratepayers at the office of the vestry clerk at the same time with the accounts audited under the Act (*i*).

(*c*) They are also expressly exempted by sect. 62 of that Act, *post*. Exempted charities are, however, empowered to make application to have the benefit of the Charit. Trusts Acts extended to them: Charit. Trusts Act, 1869, s. 14, *post*. And, by sect. 15 of the same Act, the exemption of places of worship has been removed, so far as relates to the appointment and removal of trustees, the vesting of real or personal estate, and the establishment of schemes. See

note to that section, *post*.

(*d*) Places of Religious Worship Registration Act, 1855, s. 10.

(*e*) Sect. 11.

(*f*) Sect. 14.

(*g*) *Rex v. Justices of Derby*, 4 Burr. 1991.

(*h*) Sect. 39; this section, although not repealed, is believed to be obsolete.

(*i*) Met. Local Management Act, 1856, s. 199.

A copy of the accounts furnished by charity trustees to the Charity Commissioners is, in the case of parochial charities, required to be sent to the churchwardens of the parish with which the objects of the charity are identified. The churchwardens must then present the same at the next general meeting of the vestry, and insert a copy in the minutes of the vestry book. The copy must be open to inspection and copies of it may be obtained (k).

Entry in vestry books of accounts sent to Charity Commissioners.

Nuisance.

A charitable institution cannot, of course, be established in such a way or in such a situation as to constitute a nuisance, unless under the authority of an Act of Parliament so directory and specific as to take away from the neighbours or the public the right which they would otherwise have had to complain of the nuisance. And the establishment of it in such a way or place may be restrained by injunction (l). This is illustrated by the various cases which have arisen with regard to small-pox hospitals (m).

The erection of a building for the education and lodging of girls, in connection with a charitable institution for the daughters of missionaries, is a breach of a covenant not to use a house otherwise than as a private dwelling-house, or for any purpose of trade (n).

Covenant not to carry on business, and to use house as private dwelling house only.

Similarly, a charitable institution for working-girls, whether any payment is taken or not, is a business within the meaning of a covenant not to carry on any trade or business on the premises (o). So also is a hospital (p).

The establishment of a hospital for the treatment of out-door patients suffering from diseases of the throat, nose, ear, skin, eye, fistula, and other diseases, is a breach of a covenant in a building lease against carrying on certain specified trades, or doing any act "which shall or may be or grow to the annoyance, nuisance, grievance, or damage of the lessor, his heirs or assigns, or the inhabitants of the neighbouring or adjoining houses," and will be restrained by injunction (q).

Obnoxious trades.

(k) Charit. Trusts Amend. Act, 1855, s. 44, *post*.

(l) *Metropolitan Asylum District v. Hill*, 6 App. Cas. 193.

(m) *Baines v. Baker*, Amb. 158; *Metropolitan Asylum District v. Hill*, *supra*; *Fleet v. Metropolitan Asylums Board*, 2 Times L. R. 361; *Matthews v. Mayor, &c. of Sheffield*, 31 Sol. J. 773;

Bendelow v. Guardians of Wortley Union, 57 L. J. Ch. 762.

(n) *German v. Chapman*, 7 Ch. D. 271.

(o) *Rolls v. Miller*, 27 Ch. D. 71.

(p) *Bramicell v. Lacy*, 10 Ch. D. 691; *Portman v. Home Hospitals Association*, 27 Ch. D. 81, n.

(q) *Tod-Heatley v. Benham*, 40 Ch. D. 80.

CHAPTER X.

REMEDIES FOR BREACH OF TRUST.

Remedies for breach of trust. THE remedies for breach of trust may be considered in the following order: (1) the right of the *cestuis que trust* to follow the estate into the hands of a stranger to whom it has been wrongfully conveyed, and the right to follow and attach property into which the trust estate has been improperly converted; (2) the remedies against the trustees, &c.

Right to follow Trust Estate.

Volunteer. It is clear that a charity estate may be followed into the hands of a volunteer, whether he had notice of the trusts or not (*a*).

Purchaser for value with notice. If the estate is aliened to a purchaser for value with notice of the trusts, he is affected by the trusts in the same manner and to the same extent as the persons from whom he purchased (*b*).

Notice before conveyance. Notice at any time before the execution of the conveyance is binding upon a purchaser (*c*).

Getting in legal estate. And although a purchaser for value without notice before conveyance may ordinarily, if it afterwards appear that the conveyance is defective, protect himself by getting in the legal estate, yet he cannot do so by taking a conveyance of the legal estate from the trustees (*d*).

Improper alienation set aside. An alienation of charity land which constitutes a breach of trust (*e*), whether by way of absolute conveyance (*f*), or by way of lease, and for whatever term of years (*g*), will, unless the defence

(*a*) *Mansell v. Mansell*, 2 P. Wms. at p. 681; Lewin on Trusts, 8th ed. p. 857.

(*b*) *Harding v. Edge*, 2 Ch. Ca. 94; *Att.-Gen. v. Christ's Hospital*, 3 My. & K. 344; *Att.-Gen. v. Flint*, 4 Hare, 147; *Att.-Gen. v. Hall*, 16 Beav. 388.

(*c*) *Inhabitants of Woodford v. Parkhurst*, Duke, 70; *ibid.* by Bridg. 378.

(*d*) *Saunders v. Dehew*, 2 Vern. 271. See *Mumford v. Stohwasser*, L. R. 18 Eq. 556.

(*e*) As to when an alienation is a breach of trust, see Chap. IX. sect. 2, *ante*.

(*f*) *Att.-Gen. v. Kerr*, 2 Beav. 420; *Att.-Gen. v. Christ's Hospital*, 3 My. & K. 344; *Att.-Gen. v. Brettingham*, 3 Beav. 91; *Att.-Gen. v. Bishop of Manchester*, L. R. 3 Eq. 436. See also *Blackston v. Homsworth Hospital*, Duke, 49; and *ante*, pp. 251 *et seq.*

(*g*) *Re Lawford Charity*, 3 Mer. at p. 457; *Lydiatt v. Foach*, 2 Vern. 410; *Att.-Gen. v. Green*, 6 Ves. 452; *Att.-Gen. v. Brooks*, 18 Ves. 319; *Att.-Gen. v. Pilgrim*, 12 Beav. 57; *Ward v. Hipwell*, 3 Giff. 547. See also cases cited *ante*, p. 260.

of purchase for value without notice, or the Statutes of Limitations can be pleaded, be set aside.

An inquiry may be directed as to the propriety of taking proceedings to set aside a lease (*h*), and the lessee may have leave to attend (*i*). Inquiry.

And, as has been seen, if the alienation is absolute (*j*), or for a long term of years (*k*), or with a covenant for perpetual renewal (*l*), the onus of proving that the transaction was provident and beneficial to the charity is upon the persons dealing with the trustees. Onus of proof.

In *Att.-Gen. v. Bishop of Manchester* (*m*) the surviving trustee of a private chapel held upon trust for the benefit of a charitable institution conveyed it to the Church Building Commissioners (now the Ecclesiastical Commissioners), under the Church Building Acts (*n*). It was held that the conveyance was a breach of trust, and ought to be set aside, although the Commissioners had caused the chapel to be consecrated as a parish church, and the parson who had been chaplain of the charity to be appointed incumbent of it, and a district to be assigned to it under an Order in Council, and although the charitable institution, in return for the loss of their chaplain and chapel, had had two galleries in the church allotted to them. And Stuart, V.-C., said (*o*): "It is a consideration of some importance that by the consecration, and by the Order in Council, this chapel, which was converted (improperly, as I think, by these proceedings) into a parish church, has had a district assigned to it, and has been used as a parish church, and banns have been published in it, and other things have been done which must be affected by the decree which I must make. But where public acts are done by public bodies, if they interfere with the rights of property in the way mentioned by Lord Cottenham (*p*), they must be considered only as the acts of private persons improperly dealing with property."

A lease of a charity estate may be set aside on the mere ground of undervalue of the rent reserved (*q*). Lease set aside for undervalue.

(*h*) Set., 4th ed. pp. 577 seq.

(*i*) *Att.-Gen. v. Pretymann*, 8 Beav. 316.

(*j*) *Att.-Gen. v. Brettingham*, 3 Beav. 91.

(*k*) *Att.-Gen. v. Green*, 6 Ves. 452; *Att.-Gen. v. Owen*, 10 Ves. 555; *Att.-Gen. v. Griffith*, 13 Ves. 65; *Att.-Gen. v. Backhouse*, 17 Ves. 283; *Att.-Gen. v. Hall*, 16 Beav. 388.

(*l*) *Lydiatt v. Foach*, 2 Vern. 410; *Att.-Gen. v. Brooke*, 18 Ves. at p. 326; *Att.-Gen. v. Hungerford*, 2 Cl. & F. 357.

(*m*) L. R. 3 Eq. 436.

(*n*) 58 Geo. III. c. 45; 59 Geo. III. c. 134; 3 Geo. IV. c. 72.

(*o*) At p. 459.

(*p*) See *Frewin v. Lewis*, 4 My. & C. at p. 254.

(*q*) *Croucher v. Citizens of Worcester*, Duke, 33; *Roice v. Almshouses of Tavistock*, Duke, 42; *Poor of Yervel v. Sutton*, Duke, 43; *Wright v. Newport-Pond School*, Duke, 46; *Inhabitants of Elltham v. Warreyn*, Duke, 67; *Att.-Gen. v. Lord Gower*, 9 Mod. 224, 229; *East v. Ryall*, 2 P. Wms. 284; *Att.-Gen. v. Dixie*, 13 Ves. 519; *Att.-Gen. v. Magwood*, 18

Undervalue must be clear.

But the undervalue must be satisfactorily proved, and considerable in amount. It is not enough to show that a little more rent might have been obtained for the estate than was actually reserved (r).

Subsequent increase of value.

Nor is it sufficient to infer the underletting from the value of the property at some subsequent period (s). Still less, if the transaction was originally proper, can a subsequent change of circumstances, as an increase in the value of the property, be a ground for setting it aside (t).

"It ought to be remembered . . . that the case of a charity is one in which, of all others, the security of the rent is the first object to be regarded; and, therefore, in such cases, the inadequacy of the rent reserved is less a badge of fraud than it would be in almost any other instance" (u).

Corrupt motive.

"A tenant who has got a lease of a charity estate at too low a rent with reference to the actual value is not therefore to be turned out, if it appears that he has himself acted fairly and honestly. The only ground for so dealing with him would be some evidence or presumption of collusion or corrupt motive" (x).

Lease signed by majority of trustees.

The mere fact that a lease was signed by a majority, and not all of the trustees, is no ground for setting it aside; for, as a general rule, the majority have power to bind the minority (y).

Lessee cannot dispute landlord's title.

The lessee cannot set up as a defence a defect in the title of the lessor; for it is a universal principle that a tenant is estopped from disputing his landlord's title (z).

Lease set aside notwithstanding expenditure. Allowance for permanent improvements.

A lease may be set aside notwithstanding that there has been large expenditure in re-building and repairs on the faith of it (a).

If there has been no actual fraud, an allowance will be made for permanent improvements, both in the case of a sale (b) and of a lease (c), except where no account is taken of back rents and profits (d). This is done upon the principle that the Attorney-General, coming for the assistance of equity, must do equity.

Ves. 315; *Att.-Gen. v. Wilson*, *ibid.* 518; *Att.-Gen. v. Morgan*, 2 Russ. 306.

(r) Per Grant, M. R., in *Att.-Gen. v. Cross*, 3 Mer. at p. 541. See also *Re Lawford Charity*, 2 Mer. at p. 457.

(s) *Ibid.*

(t) *Att.-Gen. v. Pembroke Hall*, 2 S. & S. 441, 447, where the Court refused to set aside an ancient arrangement which had been perfectly fair when entered into; *Att.-Gen. v. Hungerford*, 2 Cl. & F. 357.

(u) Per Lord Eldon in *Re Lawford Charity*, 2 Mer. at p. 457. See also *Att.-Gen. v. Hungerford*, *supra*.

(z) Per Lord Eldon in *Re Lawford Charity*, *supra*, at p. 457.

(y) *Att.-Gen. v. Shearman*, 2 Beav. 104; and see *ante*, pp. 233, 234.

(z) *Att.-Gen. v. Lord Hotham, T. & R.* 209. See *Rex v. Corporation of Bedford Level*, 6 East, 356.

(a) *Att.-Gen. v. Darcy*, 19 Beav. 521.

(b) *Att.-Gen. v. Magdalen Coll., Oxford*, 18 Beav. 223.

(c) *Shine v. Gough*, 1 B. & B. at p. 444; *Att.-Gen. v. Baliol Coll.*, 9 Mod. at p. 411; *Att.-Gen. v. Green*, 6 Ves. 452; *Swan v. Swan*, 8 Price, 518; *Att.-Gen. v. Kerr*, 2 Beav. 420; and see *Att.-Gen. v. St. John's Hospital, Bath*, L. R. 1 Ch. 92.

(d) *Att.-Gen. v. Magdalen Coll., Oxford*, *supra*.

Where, however, the title of the defendant is bad both at law and in equity, it seems that, without the consent of the Attorney-General, no allowance will be made for permanent improvements (*e*).

In one case, where a lease at a very low rent had run for 150 years, no allowance was made, in setting it aside, for buildings erected on the land (*f*).

A purchaser with notice of land or a rent-charge belonging to a charity will not, it seems, be liable for rents and profits accrued before his time. But it has been said that where the rent has been concealed, a purchaser must answer for it for all the time of the concealment, upon the ground that "the land is a debtor, and *transit cum onere*" (*g*). Account of rents.

Where a lease is set aside, an account of the rents is, in aggravated cases, directed from the date of the lease, in others from the date of the inquiry, but generally from the commencement of the action. And a corresponding inquiry as to permanent improvements is made during the same period (*h*).

A trustee himself becoming tenant of charity lands will be charged with an occupation rack-rent (*i*). Trustee tenant.

Where a lease is made by trustees at an undervalue, by collusion between them and the lessee, the Court, in setting aside the lease, may direct compensation to be made to the charity by the lessee as well as by the trustees (*k*). Compensation for lease at undervalue.

Where a lease of charity lands is set aside the deed is wholly cancelled, and not even the personal covenants of the trustees are left in force for the benefit of the lessee (*l*). Lease set aside in toto.

But an underlease is not in general disturbed if it appears to be for the benefit of the charity (*m*). Underlease usually not disturbed.

The defence of purchase for value without notice is available against a charity in respect as well of a legal as of an equitable title (*n*). Purchaser for value without notice.

(*e*) *Att.-Gen. v. Lloyd*, 6 Madd. 92.

(*f*) *Att.-Gen. v. Pilgrim*, 12 Beav. 57.

(*g*) See *Hide's Case*, Duke, 76; *Peacocke v. Theuer*, Toth. 33.

(*h*) *Att.-Gen. v. Davey*, 19 Beav. at p. 527. See also *Att.-Gen. v. Harper*, 8 L. J. Ch. 12; *Att.-Gen. v. Hall*, 16 Beav. at p. 396; *Att.-Gen. v. Earl of Craven*, 21 Beav. 392; *Att.-Gen. v. Corporation of Cashel*, 3 Dr. & W. 294.

(*i*) *Att.-Gen. v. Dixie*, 13 Ves. at p. 534; *Att.-Gen. v. Earl of Clarendon*, 17 Ves. at p. 500; *Att.-Gen. v. Corporation of Cashel*, 3 Dr. & W. 294, where the lease was by a corporation to one of

their own body.

(*k*) *Poor of Yervel v. Sutton*, Duke, 43; *Att.-Gen. v. Mayor of Stamford*, 2 Swanst. at p. 592; *Att.-Gen. v. Dixie*, *supra*, at p. 540.

(*l*) *Att.-Gen. v. Morgan*, 2 Russ. 306. (*m*) *Att.-Gen. v. Backhouse*, 17 Ves. at p. 292; and see *Att.-Gen. v. Griffith*, 13 Ves. at p. 581.

(*n*) *Att.-Gen. v. Wilkins*, 17 Beav. 215. This was recognised by the Stat. of Charit. Uses (43 Eliz. c. 4), s. 6, now repealed by the Mortm. and Charit. Uses Act, 1888. Under that section a purchaser could protect himself only if the valuable consideration consisted of

In *Att.-Gen. v. Lord Gower* (o) it was said that a charity was entitled to no favour against a purchaser for valuable consideration, and that if a man, for valuable consideration, and without notice or fraud, obtained such an estate, there was no reason to take it away.

Lessee. A lessee of charity lands without notice is equally entitled to protection (p).

Purchaser without notice from purchaser with notice.

Although as a general rule a purchaser without notice from a purchaser with notice has a good defence, yet it has been decided that, in the case of a charity, a purchaser without notice from a purchaser with notice is bound (q).

Purchaser with notice from purchaser without notice.

In other respects it is said that the common rules as to notice prevail in the case of charities (r). It seems, therefore, that a purchaser with notice of a charitable trust, from a purchaser without notice, would have a good title, unless the purchaser with notice had himself been a trustee of the charity (s).

Purchaser of land without notice of rent-charge.

If a rent-charge has been granted out of land to a charitable use, and the land is afterwards sold for valuable consideration to one who had no notice of the rent, yet the rent remains; for the purchase was of another thing that was not given to the charitable use (t). If, however, the rent-charge were equitable, a purchaser without notice would not be affected by it (u).

Old Statutes of Limitations.

The old Statutes of Limitations (x) did not bind the Court of Chancery. As a general rule, however, that Court, acting by analogy, followed their provisions, and opposed a bar to equitable claims similar to that provided by the legislature in the case of proceedings at law. To this rule the Court of Chancery allowed an exception in charity cases (y).

3 & 4 Will. IV. c. 27, and

In the Real Property Limitation Act of 1833 (z), charities are not expressly mentioned, but it is well established that its provi-

money or land. A person, therefore, taking under a settlement of the charity lands on the marriage of the settlor's daughter was not a purchaser for value under the section: *Duke*, ed. by Bridg. 158. So if the settlement was in consideration of money and marriage, or money and natural affection, it was insufficient, and if the consideration was inadequate, it was not considered valuable: *Duke*, 177.

(o) 2 Eq. Ca. Abr. 195, fol. 16.

(p) *Att.-Gen. v. Hall*, 18 Beav. 388, 392.

(q) *East Greensted's Case*, *Duke*, 65; *Sutton Coldfield's Case*, *ibid.* 68; and see *Commissioners of Charitable Donations v. Wybrants*, 2 J. & Lat. at p. 194.

(r) See *Sug. V. & P.*, 14th ed. p. 722.

(s) See *Lewin on Trusts*, 8th ed. p. 859.

(t) *East Greensted's Case*, *Duke*, 64, 638; *Hide's Case*, *ibid.* 77; ed. by Bridg. at p. 636; *Wharton v. Charles*, Rep. t. Finch, 81.

(u) *Sug. V. & P.*, 14th ed. p. 722.

(x) 32 Hen. VIII. c. 2; 21 Jac. I. c. 16.

(y) *Att.-Gen. v. Mayor, &c. of Coventry*, 2 Vern. at p. 399; *Att.-Gen. v. Mayor of Exeter*, Jac. at p. 448; *Att.-Gen. v. Christ's Hospital*, 3 My. & K. 344; *Incorporated Society v. Richards*, 1 Dr. & W. 258.

(z) 3 & 4 Will. IV. c. 27.

sions extend to them (a). They are equally, of course, within the 37 & 38 Vict. Real Property Limitation Act, 1874 (b), which is merely an amend- c. 57.
ing Act.

"The new statute," said Lord St. Leonards (c), referring to the Real Property Limitation Act of 1833, "no longer left courts of equity to act by analogy; but expressly enacted that no person claiming any land or rent in equity should bring any suit to recover the same but within the period during which, by virtue of the provisions of the Act, he might have made an entry or distress, or brought an action to recover the same, if he had been entitled at law to such estate, interest, or right, in or to the same as he shall claim therein in equity (d). This, therefore, is quite as imperative as the enactment binding legal estates. No person can bring any suit but within the legal limitation. This leaves to equity no discretion. The statute deals generally with equitable rights, and treats them thus far on the footing of legal interests. Then comes the exception in sect. 25:—that when any land or rent shall be vested in a trustee upon any express trust, the right of a *cestui que trust* to bring a suit against the trustee, or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued at, and not before, the time at which such land or rent shall have been conveyed to a purchaser for valuable consideration, and then be deemed to have accrued only as against such purchaser, and any person claiming through him. And the statute then provides for the case of fraud (e). Now it appears to me that unless the case can be brought within this saving, which operates between trustee and *cestui que trust*, it would fall within the general prohibition in sect. 24. For charities were only saved in equity from the operation of the former statutes as trusts, although highly favoured ones; and now all trusts are barred by sect. 24, unless saved by sect. 25; and I am not at liberty to introduce an exception into the Act, which the legislature, providing generally for all trusts, have not thought it proper to enact."

Sect. 25 of the Act provides that, in the case of an express trust, 3 & 4
the right of the *cestui que trust* or any person claiming through Will. IV.
him to recover the land or rent shall be deemed to have first c. 27, s. 25.
accrued, according to the meaning of the Act, at and not before the time at which such land or rent shall have been conveyed to a purchaser for valuable consideration, and shall then be deemed to

(a) *President, &c. of Magdalen Coll., Oxford v. Att.-Gen.*, 6 H. L. C. 189;
Commissioners of Charitable Donations v. Wybrants, 2 J. & Lat. 182.

(b) 37 & 38 Vict. c. 57.

(c) *Commissioners of Charitable Donations v. Wybrants*, *supra*, at p. 195.

(d) See sect. 24.

(e) Sect. 25.

have accrued only as against such purchaser or any person claiming through him.

Time runs from conveyance for value.

Under this section, accordingly, time does not begin to run until the land has been conveyed by the trustee to a purchaser for value (*f*).

Express trust.

Nor, again, does the statute apply as between an express trustee and his *cestui que trust* (*g*).

Express and constructive trusts.

Express trusts are trusts which appear on the face of the instrument creating them (*h*). These alone are within the exception. Constructive trusts, which are elicited by the principles of equity from the acts of the parties (*i*), were never saved from the operation of the Acts.

Charges.

Money secured on mortgage, judgment, or lien, or charged upon, or payable out of, land or rent, and legacies, do not come within the description of express trusts, for the reason that they are specially dealt with by a separate section (*j*), and actions in respect thereof are barred at the end of twelve years (*k*).

Word "trust" not necessary.

The use of the word "trust" is, however, not essential to the creation of an express trust (*l*).

Charge coupled with duty.

Where a devisee is invested with a fiduciary character, a charge upon an estate devised to him may be an express trust.

In *Commissioners of Charitable Donations v. Wybrants* (*m*) a testator devised lands to trustees and their heirs upon trust to convey the same to the use of J. W. for life, charged with four charitable annuities, to commence upon the death of X., and after the death of J. W., subject to the annuities, to the use of his first and other sons in tail; and he directed the annuities to be paid, and expressly charged his estate with them. X. died more than twenty years before the bill, and no payment had ever been made in respect of the annuities. No conveyance had been executed by the trustees; but J. W. had been in possession, and he and his eldest son had suffered a recovery and re-settled the estates. It

(*f*) See *Att.-Gen. v. Flint*, 4 Hare, at p. 155.

(*g*) Sect. 25 of 3 & 4 Will. IV. c. 27, supplemented by sect. 25, sub-sect. (2), of the Jud. Act, 1873, which enacts that "no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations." This last section has been said to be "but a statutory declaration of a law which has always been recognized and administered by Courts of Equity:" *Re Cross*, 30 W. R. 376, per Baggallay, L. J. See *Att.-Gen. v. Flint*, 4 Hare,

147. It would seem to have expressly extended sect. 25 of 3 & 4 Will. IV. c. 27, to personal estate: *Banner v. Ber-ridge*, 18 Ch. D. at p. 262.

(*h*) *Salter v. Cavanagh*, 1 Dr. & Wal. 668.

(*i*) Lewin on Trusts, 8th ed. pp. 877, 878; and pp. 180 *seq*.

(*j*) 37 & 38 Vict. c. 57, s. 8, substituted for 3 & 4 Will. IV. c. 27, s. 40.

(*k*) See Lewin on Trusts, 8th ed. p. 878; *Cadbury v. Smith*, L. R. 9 Eq. 37.

(*l*) Lewin on Trusts, 8th ed. p. 877.

(*m*) 2 J. & Lat. 182.

was held by Sugden, L. C., that the right to recover the annuities was not barred. "Is then," said his Lordship, "the provision for the annuities to charities an express trust within section 25? It certainly is so, if the trust to convey is to be considered as still in existence: for the conveyance can only be properly made by securing the annuities; and the trustees have a power of leasing; and there is a direction to pay the annuities, which would apply to the trustees. They are trustees for the trusts declared until they convey; and these are all express trusts" (n).

An alteration of the law has been effected by the Trustee Act, 1888 (o), which provides (p) that, as regards all proceedings commenced after the 1st of January, 1890, except in the case of a fraudulent breach of trust, the Statutes of Limitations shall apply as between a trustee and any person claiming under him and the *cestuis que trust*.

Trustee Act,
1888.

As soon as an estate is conveyed to a purchaser for valuable consideration, whether by way of sale (q) or lease (r), time begins to run, under the statute, from the date of the execution of the deed (s).

Time runs
from date of
deed.

Where there is no person to represent the charity so as to make a claim, the statute does not run.

No person to
represent
charity.

In *Att.-Gen. v. Perse* (t) a testator devised a rent-charge as a salary for a schoolmaster, to be appointed by the owner for the time being of the estate on which the rent was charged. A schoolmaster was never appointed. Twenty-seven years afterwards an information was filed to carry the trust into execution, and it was held that, no schoolmaster having been appointed, the Statute of Limitations could not run against the demand of a non-existing person.

The poor of a parish constitute a class of persons within the interpretation clause of 3 & 4 Will. IV. c. 27 (u).

Poor of parish
are class of
persons
within 3 & 4
Will. IV.
c. 27, s. 1.
Action by
Attorney-
General.

And as the Attorney-General has no independent rights of his own, but merely represents the objects of the charity, an action in the nature of an information cannot be brought, except in certain cases, against the trustees, unless within the time allowed by the Statutes of Limitations.

In *President, &c. of Magdalen College, Oxford v. Att.-Gen.* (x), *President, &c. of Magdalen*

(n) See also *Att.-Gen. v. Perse*, 2 Dr. & W. 67; *Hunt v. Bateman*, 10 Ir. Eq. R. 360; *Dundas v. Blake*, 11 Ir. Eq. R. 138.

(o) 51 & 52 Vict. c. 59.

(p) Sect. 8, *post*, p. 306.

(q) *President of Magdalen Coll., Oxford v. Att.-Gen.*, 6 H. L. C. 189.

(r) *Att.-Gen. v. Davey*, 4 De G. & J. 136; *Att.-Gen. v. Payne*, 27 Beav. 168.

(s) *Att.-Gen. v. Flint*, 4 Hare, 147.

(t) 2 Dr. & W. 67. See *Incorporated Society v. Richards*, 1 Dr. & W. at p. 288.

(u) Sect. 1. See *President, &c. of Magdalen Coll., Oxford v. Att.-Gen.*, 6 H. L. C. 189; *Att.-Gen. v. Davey*, 4 De G. & J. 136. See also *Bobbett v. South Eastern Ry. Co.*, 9 Q. B. D. at p. 427.

(x) *Supra*.

Coll. v. Att.-Gen.

the rectors, churchwardens, and principal inhabitants conveyed property held by them for the benefit of the poor of two parishes to the defendants for a perpetual annuity of 15*l.*, which was the greatest annual rent which could then be obtained. The property had greatly increased in value. Upon an information filed sixty years afterwards, it was held by Romilly, M. R., that the rectors and churchwardens had been guilty of a breach of trust in conveying the property away, against which the Court would relieve, and that the Statute of Limitations did not bar the suit. The House of Lords, however, held that the real plaintiffs were the poor of the two parishes, that they were in the situation of *cestuis que trust*, that the suit by the Attorney-General (who had no independent rights) was a suit by them, that they could not maintain such suit unless against their trustees except within twenty years, and that, the suit, being against a purchaser for value after the expiration of more than twenty years from the time of the purchase, was barred.

Right to impeach improvident lease.

The case is the same where an improvident lease has been granted. The right to impeach it accrues immediately upon its execution, and is barred after the expiration of the time prescribed by the Statutes of Limitations (*y*).

Att.-Gen. v. Davey.

In *Att.-Gen. v. Davey* (*z*), lands were vested in trustees upon trust that the churchwardens of a certain parish should let the same, and with the rents repair the parish church, and lay out the surplus in support of the common charges of the parishioners. In 1726 a lease was granted for 500 years at a rent which had been regularly paid. It was held by the Court of Appeal in Chancery (*a*) that the case was governed by *President, &c. of Magdalen College, Oxford v. Att.-Gen.* (*b*), and that the Statute of Limitations was a bar to proceedings to set the lease aside.

In another case a similar decision was arrived at with regard to an improvident lease, which had been granted by a charitable corporation to a trustee for the master of the charity (*c*).

Such leases voidable.

In the last-mentioned cases the lease has been merely voidable, that is, valid until set aside. The right of the *cestuis que trust* in respect of it has therefore been to have it set aside, which is a right which accrues immediately on execution.

Distinction between them

Such cases must be distinguished from those in which the lease

(*y*) Now twelve years: Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 1.

(*z*) 4 De G. & J. 136.

(*a*) Reversing the decision of Romilly, M. R., 19 Beav. 521.

(*b*) *Supra*.

(*c*) *Att.-Gen. v. Payne*, 27 Beav. 168. See also the observations of Jessel, M. R., and the Court of Appeal in *Governors of Magdalen Hospital v. Knotts*, 5 Ch. D. at p. 182; and 8 Ch. D. at pp. 728, 729.

is void *ab initio*. In the latter cases the right of the persons interested in the charity is not to have the lease set aside, for there never was a lease, but to recover possession of the property improperly held by the lessee. and void leases.

Here, if the Statutes of Limitations run at all, their operation is to vest the property absolutely in the persons who have been in possession under the void lease. Effect of Statutes of Limitations on void leases.

Whether the statutes run or not depends upon whether rent has or has not been paid. If no rent has been paid, no tenancy has been created, and the statutes run in favour of the persons purporting to be lessees from the date at which they entered into possession. If, on the other hand, rent has been paid, the payment of rent constitutes a tenancy from year to year. The case consequently falls within sect. 8 (*d*) of 3 & 4 Will. IV. c. 27, and the statutes begin to run from the date of the last payment of rent. The first rule is illustrated by *President, &c. of Magdalen Hospital v. Knotts* (*e*), and the second by *Bunting v. Sargent* (*f*). Depends on whether rent has been paid.

In *President, &c. of Magdalen Hospital v. Knotts* (*g*), a lease had been granted in 1783 by an eleemosynary corporation for ninety-nine years at a peppercorn rent. It was held that the lease was void under 13 Eliz. c. 10 (*h*), and that the lessees having been in possession of the property without any title, and the relation of landlord and tenant never having subsisted, the Statute of Limitations had run against the lessors. *President, &c. of Magdalen Hospital v. Knotts.*

If any rent, however small, had been reserved and received, the result would have been different, for then the legal relation of a tenancy from year to year would have been created, and the Statute of Limitations could not have run (*i*). Rent paid.

In *Bunting v. Sargent* (*j*), a lease had been granted of a Dissenting chapel for ninety-nine years, with a covenant for renewal at the yearly rent of 1s. The lease had not been inrolled under the Mortmain Act (*k*), but rent had been paid within the last five years. It was held, in an action by the owner of the freehold reversion to recover possession of the property comprised in the lease, that the lease was void for non-inrolment; but that a tenancy from year to year had been created, and that, rent having been paid under that *Bunting v. Sargent.*

(*d*) This section provides that when any person shall be in possession as tenant from year to year or other period without any lease in writing, the right of the person entitled subject thereto to bring an action to recover such land or rent shall be deemed to have first accrued at the determination of the first year or other period, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).

(*e*) 4 App. Cas. 324.

(*f*) 13 Ch. D. 330.

(*g*) 4 App. Cas. 324, affirming *S. C.*, 8 Ch. D. 709, and reversing *S. C.*, 5 Ch. D. 175.

(*h*) See *ante*, pp. 262, 263.

(*i*) *President, &c. of Magdalen Hospital v. Knotts*, *supra*, at p. 335, per Lord Selborne.

(*j*) *Supra*.

(*k*) 9 Geo. II. c. 36, now Part II. of the Mortm. and Charit. Uses Act, 1888.

tenancy, the Statutes of Limitations could not begin to run until the last payment of rent had been made.

Interval of
non-payment
of rent
immaterial.

The mere fact that there had been an interval of more than twenty years during which no rent had been paid was immaterial, rent having been subsequently accepted (*m*).

Fraud.

Where a person has become the owner of charity land by means of fraud, time does not run while the fraud remains concealed. But if after discovery of the fraud, the persons who might have done so neglect for the time limited by the statutes to avail themselves of their right to set aside the transaction, they will be barred (*n*).

Presumption
arising from
lapse of time.

Even in cases where the Statutes of Limitations oppose no statutory bar, it does not follow that relief will be given after a great lapse of time. It was the constant course of Courts of equity to discourage stale demands, and length of time, though not operating as a bar, might yet raise a presumption that a debt had been paid or a right released (*o*).

The Court would accordingly sometimes presume that charity property had been dealt with with the concurrence and approbation of the *cestuis que trust* (*p*).

Acquiescence.

No doubt where an information was filed in the name of the Attorney-General for the misapplication of the funds of an endowed charity, neither consent nor lapse of time would have been a bar (*q*).

But, "generally speaking, if a party having an interest to prevent an act being done, has full notice of its having been done, and acquiesces in it, so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done by his previous licence" (*r*). This is simply an application of the maxim "*Volenti non fit injuria*."

Cairncross v. Lorimer.

In *Cairncross v. Lorimer* (*s*), a congregation of Seceders had by a formal vote united themselves to the Free Church of Scotland, and in pursuance of that vote a Free Church minister had been inducted. Four members of the congregation, who had had complete knowledge of all the proceedings and had not objected or

(*m*) *Bunting v. Sargent*, 13 Ch. D. 330.

(*n*) *Hovenden v. Lord Annesley*, 2 Sch. & L. at p. 634; *Trevelyan v. Charter*, 9 Beav. 140; *S. C.* nom. *Charter v. Trevelyan*, 11 Cl. & F. 714; *Commissioners of Charitable Donations v. Wybrants*, 2 J. & Lat. 182.

(*o*) See per Plumer, M. R., in *Att.-Gen. v. Mayor of Exeter*, Jac. at p. 448. Cf. *Pickering v. Lord Stamford*, 2 Ves.

Jun. 272.

(*p*) *Re Chertsey Market*, 6 Price, at p. 280.

(*q*) *Cairncross v. Lorimer*, 3 Macq. 827; *Corporation of Newcastle v. Att.-Gen.*, 12 Cl. & F. 402; and see *ante*, pp. 248, 249.

(*r*) *Cairncross v. Lorimer*, *supra*, at p. 830.

(*s*) *Supra*. See also *Att.-Gen. v. Munro*, 9 Jur. 461.

dissented, more than three years afterwards brought an action to have the property which had passed by the amalgamation restored. It was held that the action was instituted by them in respect of their own individual interests, and that in respect of those interests they were precluded by their own conduct from maintaining the action.

The Trustee Act, 1888 (*t*), brings all cases of express trust, except where there has been a fraudulent breach of trust, within the Statutes of Limitations. Trustee Act, 1888.

The *cestuis que trust* may also, instead of following the trust estate, sue for the property into which it has been wrongfully converted by the trustees. Thus, where a corporation sold a charity estate belonging to a hospital, and applied the purchase-money, with other moneys of their own, in the purchase of another estate, it was held that the hospital was entitled to such proportion of the purchased estate as was attributable to the purchase-money of the charity estate (*u*). Right to attach property into which trust estate has been converted.

Remedies against Trustees, &c.

Where charity property has been converted to improper purposes, it will be restored to its proper use. Property converted to improper purposes restored.

Thus, where a chapel has been converted to a form of worship different from that which was intended by the founders, it will be restored (*x*). And if a trust fund is being applied to improper purposes it will be recalled, secured, and applied to the charitable purposes to which it is devoted (*y*).

However important usage may be in determining the nature of a charitable trust where the instrument of foundation is lost or ambiguous in its terms (*z*), yet where the trust is clear and precise no length of time during which a contrary practice has prevailed can warrant the Court in making a decree in contradiction to the trust (*a*). Usage immaterial where trusts clear.

Accordingly, if the trust is clear the Court will stop the improper application of the funds however long the misapplication has continued. Where the charter of a charity directed that the property of the charity should be applied for the benefit of the poor, the trust was enforced, although for several centuries only

(*t*) 51 & 52 Vict. c. 59, *post*, p. 306.

(*u*) *Att.-Gen. v. Corporation of Newcastle*, 5 Beav. 307; *S. C.*, 12 Cl. & F. 402.

(*x*) *Att.-Gen. v. Aust*, 13 L. T. N. S. 235; *Att.-Gen. v. Munro*, 2 De G. & Sm. 122; *Milligan v. Mitchell*, 3 My. & C. 72; *Newsome v. Flowers*, 30 Beav. 481. See *Cairncross v. Lorimer*, 3 Macq. 827;

Shore v. Wilson, 9 Cl. & F. 355.

(*y*) See *Att.-Gen. v. Aspinall*, 2 My. & C. 613, 618.

(*z*) See *ante*, pp. 114, 115.

(*a*) *Att.-Gen. v. Corporation of Rochester*, 5 De G. M. & G. at p. 822. And see *Att.-Gen. v. Corporation of Beverley*, 6 De G. M. & G. at p. 268.

certain payments had been made to the poor, and the residue of the revenues enjoyed by the master (*b*).

Action by corporation to set aside fraudulent transaction.

A corporation may sue to set aside transactions fraudulent against it, although they were effected in its name by members of the governing body (*c*). And that right is not affected by the fact that the Attorney-General has also a right to call the transactions in question (*d*).

Action by charity trustees to have accounts taken for their own protection. Injunction to restrain breach of trust.

The trustees of a charity may bring an action against the Attorney-General to have the accounts of the charity taken and to be discharged from personal liability (*e*).

A breach of trust may be restrained by injunction. Thus, an injunction will be granted against the user of a chapel for a form of worship not authorized by the trusts (*f*).

Minister restrained from officiating.

So, also, an injunction may be granted to restrain a minister who has ceased to belong to the denomination for which the chapel was established (*g*), or who has been properly dismissed (*h*), from officiating.

Improper appointment of minister. Mortgage.

The trustees of a Presbyterian chapel were restrained from electing as minister a person not duly licensed (*i*).

Charity trustees may be restrained from improperly mortgaging the charity estates (*k*).

Injunction against co-trustees.

A single trustee, when aware that his co-trustees are about to commit a breach of trust, may apply to the Court to prevent it (*l*).

By majority of trustees against minority.

In *Perry v. Shipway* (*m*), a minority of the trustees of a chapel were restrained from retaining possession of it in opposition to the will of the majority.

Dissemination of literature restrained.

In one case an injunction was granted to restrain the agent of a voluntary society who had been dismissed from acting as agent of or selling books published by the society (*n*).

Removal of trustees.

Trustees who have been concerned in a misapplication of the trust property are, as a rule, removed, and new trustees appointed in their stead (*o*).

Trustee lessee.

A trustee who, contrary to the scheme regulating the charity,

(*b*) *Att.-Gen. v. St. John's Hospital, Bedford*, 2 De G. J. & S. 621. See *Att.-Gen. v. St. Cross Hospital*, 17 Beav. 435; *Att.-Gen. v. Evelme Hospital*, *ibid.* 366.

(*c*) *Att.-Gen. v. Wilson*, Cr. & Ph. 1.

(*d*) *Ibid.*

(*e*) *Governors of Christ's Hospital v. Att.-Gen.*, 5 Hare, 257.

(*f*) *Att.-Gen. v. Welsh*, 4 Hare, 572.

(*g*) *Att.-Gen. v. Murdoch*, 7 Hare, at p. 446.

(*h*) *Cooper v. Gordon*, L. R. 8 Eq. 249.

(*i*) *Milligan v. Mitchell*, 1 My. & K. 446; 3 My. & C. 72.

(*k*) *Rigall v. Foster*, 18 Jur. 39.

(*l*) *Re Chertsey Market*, 6 Price, at p. 279.

(*m*) 4 De G. & J. 353.

(*n*) *Spurgin v. White*, 2 Giff. 473.

(*o*) *Att.-Gen. v. Pearson*, 3 Mer. 353; *Att.-Gen. v. Dixie*, 13 Ves. 519; *Att.-Gen. v. Aust*, 13 L. T. N. S. 235; *Att.-Gen. v. Munro*, 2 De G. & Sm. 122; *Shore v. Wilson*, 9 Cl. & F. 355; *Drummond v. Att.-Gen.*, 2 H. L. C. 837.

was lessee of part of the charity land, was ordered to give up the lease, or resign the trusteeship (*p*).

And corporations constituted trustees of charities have sometimes been divested of their trusts for abuse of them, as other trustees might have been (*q*), and have been ordered to convey to the new trustees at their own expense (*r*).

Corporations
divested of
trusts.

But charity trustees are not necessarily removed where the misapplication has been innocent.

Innocent mis-
application no
ground for
removal.

Thus, where great errors and misapplication of the charity funds had been committed by the trustees and their predecessors for two centuries, but no corrupt or improper motive was imputed to them, the Court refused to remove them (*s*).

If a trustee wilfully diverts a fund to his own use, he will be made to account for all the sums he has improperly received.

Trustee must
account for
funds diverted
to his own
use.

Thus, where rents were devised for the maintenance of the poor at an almshouse, formerly 10*l*., but on a re-letting 40*l*., and the heir paid over only 10*l*. to the almshouse, and retained the rest, he was made to pay over the whole 40*l*., and all arrears (*t*).

Where there had been collusion between the master and usher of a school, by means of which the master was enabled to receive funds to which he was not entitled, he was made to account for all that he had so received (*u*).

Collusion.

In a case in which property held upon trust for a hospital had been improperly sold by the trustees, and the produce lent to lighting and paving commissioners on the security of the rates, the money was ordered to be repaid by the commissioners out of the rates, notwithstanding that the Act authorizing money to be raised on the rates provided for payment off of one-twentieth of the principal annually (*x*).

Funds
improperly
applied
ordered to be
repaid.

Similarly, a corporation, trustees of a charity, will be compelled to make good funds which they have not applied in accordance with the trusts (*y*).

Corporation
must make
good breaches
of trust.

Where a corporation, trustees of a chapel, had removed the bells

(*p*) *Food v. Baker*, 27 Beav. 193.

(*q*) Per Lord Eldon in *Att.-Gen. v. Earl of Clarendon*, 17 Ves. at p. 499. See also *Mayor of Coventry v. Att.-Gen.*, 7 Bro. P. C. 235; *Ex parte Kirkby Ravensworth Hospital*, 15 Ves. 314; and *ante*, p. 96.

(*r*) *Ex parte Greenhouse*, 1 Madd. at p. 109.

(*s*) *Att.-Gen. v. Caius Coll.*, 2 Keen, 150. See also *Att.-Gen. v. Mayor of Stafford*, Barnard. 33, where the Court held that the misapplication was not sufficient to justify the removal of a

corporation from its trusteeship, and also refused to appoint a receiver.

(*t*) *Kennington Hastings' Case*, Duke, 71. See *Att.-Gen. v. Bolton*, 3 Anstr. 820; *Att.-Gen. v. Bowyer*, 5 Ves. 299.

(*u*) *Att.-Gen. v. Corporation of Bedford*, 2 Ves. Sen. 505. Cf. *Att.-Gen. v. Dixie*, 13 Ves. 519.

(*x*) *Att.-Gen. v. Kell*, 2 Beav. 575. See *Att.-Gen. v. Brandreth*, 1 Y. & C. C. C. 200, where a charitable legacy was improperly applied by executors.

(*y*) *Att.-Gen. v. Corporation of Cambridge*, 5 L. J. Ch. 357.

and pews, and pulled down the chapel, they were ordered to account for the materials, and to pay the value. And an inquiry was directed what would be the expense of restoration (z).

Where a corporation has improperly alienated charity land, they may be made to compensate the present value of the land alienated (a).

So, also, where they have permitted the charity funds to get into the hands of an agent who has misappropriated them (b).

Real Property
Limitation
Acts do not
apply to
accounts
against
trustees.

The Real Property Limitation Acts (c) do not affect the question how far the accounts against trustees should be carried back. Such an action is not an action for the recovery of rent within the earlier sections of 3 & 4 Will. IV. c. 27, nor is it an action for the recovery of arrears of rent within sect. 42 of the same Act (d).

21 Jac. I.
c. 16.

If any Statute of Limitations could be brought to bear upon such a case it would be 21 Jac. I. c. 16 (e); but, as has been already stated (f), this Act did not bind the Court of Chancery, and although it sometimes followed the Act, it did so only by analogy.

Accounts, how
far carried
back.

It was decided in some old cases that by analogy to 21 Jac. I. c. 16 accounts should only be carried back for six years before the filing of the information (g). But those cases were afterwards overruled, and it was clearly established that no fixed limit could be laid down as to the period during which charity trustees, whether corporations or individuals, would be ordered to account (h).

General
principle.

“With respect to the general principle on which the Court deals with trustees of a charity, though it holds a strict hand over them when there is wilful misapplication, it will not press severely upon them where it sees nothing but mistake. It often happens, from the nature of the instruments creating the trust, that there is great difficulty in determining how the funds of a charity ought to be administered. If the administration of the funds, though mistaken, has been honest, and unconnected with any corrupt purpose, the Court, while it directs for the future, refuses to visit with punishment what has been done in time past. To act on any other principle would be to deter all prudent persons from becoming trustees of charities” (i).

(z) *Ex parte Greenhouse*, 1 Madd. at p. 109, reversed on technical grounds, nom. *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. 17.

(a) *Att.-Gen. v. Burgesses of East Retford*, 2 My. & K. 35; 3 My. & C. 484.

(b) *Att.-Gen. v. Corporation of Leicester*, 7 Beav. 176.

(c) 3 & 4 Will. IV. c. 27; 37 & 38 Vict. c. 57.

(d) *Hicks v. Sallitt*, 3 De G. M. & G.

at p. 816.

(e) *Ibid.*

(f) *Ante*, p. 292.

(g) *Anon.*, 2 Eq. Ca. Abr. 12, pl. 20; *Love v. Eade*, Rep. t. Finch, 269.

(h) *Att.-Gen. v. Brewers' Co.*, 1 Mer. at p. 498; *Att.-Gen. v. Mayor of Exeter*, Jac. at pp. 447, 448; *Incorporated Society v. Richards*, 1 Dr. & W. 258.

(i) Per Lord Eldon in *Att.-Gen. v. Corporation of Exeter*, 2 Russ. at p. 54.

In determining how far accounts against trustees of charities will be carried back, the Court is guided by the particular circumstances of each case. Each case decided on its merits.

The authorities, however, show that the rule has been, in the absence of any special reason to the contrary, to direct accounts as far back as there has been misapplication of the funds (*k*). Result of authorities.

In *Att.-Gen. v. Mayor of Exeter* (*l*), where the trustees admitted possession of the charity estate for 200 years and stated that they had always been ready and willing to account, an account was directed for the whole of the period. Periods for which accounts have been directed.

In another case accounts were directed during the period for which the trustees had furnished accounts, which was thirty-five years (*m*). In another the trustees were ordered to account for thirty-seven years (*n*).

In another case the account in the case of a corporation was carried back to the last appointment of new trustees, rather less than ten years (*o*); and in a second suit against the same corporation, although the legal estate was not in trustees, the account by analogy was carried back for the same period (*p*).

And in the case of a corporation, where the misapplication has been gross, the Court may direct an account from the foundation of the charity (*q*), or from the date at which the breaches of trust commenced (*r*). In case of corporation from foundation of charity.

The Court of Chancery always had a discretion with regard to the period for which accounts would be directed. Court has discretion as to accounts.

In the exercise of this discretion it would never deal severely with charity trustees, whether corporations or individuals, who had not been guilty of wilful misapplication, but had acted only under mistake. Innocent mis-application.

“When there has been a long period during which a party has, under an innocent mistake, misapplied a fund, from the laches and neglect of others, that is, from no one of the public setting him right, and when the accounts have in consequence become entangled, the Court, under its general discretion, considering the enormous expense of the inquiries, the great hardship of calling upon representatives to refund what families have spent, acting on the

See *Andrews v. McGuffog*, 11 App. Cas. at p. 324.

(*k*) See, however, the Trustee Act, 1888, *post*, p. 306.

(*l*) Jac. 443; 2 Russ. 362.

(*m*) *Att.-Gen. v. Corporation of Stafford*, 1 Russ. 547.

(*n*) *Att.-Gen. v. Brewers' Co.*, 1 Mer. 495. See also *Att.-Gen. v. Corporation of*

Cambridge, 5 L. J. Ch. 357.

(*o*) *Att.-Gen. v. Mayor of Newbury*, 3 My. & K. 647.

(*p*) *Ibid.*

(*q*) *Ibid.* at pp. 652, 653.

(*r*) *Att.-Gen. v. Corporation of Leicester*, 7 Beav. 176; *Att.-Gen. v. Corporation of Cashel*, 3 Dr. & W. 294.

notion of its being their property, has been in the habit, while giving the relief, of fixing a period to the account. Unless it be upon these grounds, I do not know how the Court can take upon itself to set a limit. The accident of when the information was filed, or when the demand was made, can only be material as putting the parties on their guard, and, therefore, leaving them without excuse for any errors they may commit" (s).

The same principle was thus stated by Lord Langdale (t): "I have always considered that where a party has, quite innocently, possessed charity property which ought to have been applied according to the directions of the trust, and has so continued for a number of years, until by some accidental circumstance he has been apprised of the erroneous application, if he then comes forward and gives every facility to the future due application of the trust money, it is by no means an improper exercise of the discretion of this Court to save him as much as possible from a bygone account."

And, provided the trustees have acted honestly, although mistakenly, this rule applies equally whether the funds have been employed in attaining the objects contemplated by the trust by unauthorised means, or whether they have been employed for the attainment of objects not within the trusts at all (u), or whether they have been retained by the trustees for their own benefit, as in cases where there is a *bonâ fide* question whether surplus income belongs to the donees beneficially or is applicable to charity (x).

In cases of this kind accounts are not as a rule carried back before the commencement of the action (y).

In other cases of innocent misapplication, accounts have been directed from the time at which the trustees first had notice that the propriety of their application of the funds was questioned (z).

Lord Langdale said (a): "There are cases in which the account has been taken from the time when the information of the erro-

Accounts usually from commencement of proceedings. Or from time when application questioned.

(s) Per Plumer, M. R., in *Att.-Gen. v. Mayor of Exeter*, Jac. at p. 448.

(t) *Att.-Gen. v. Protyman*, 4 Beav. at p. 466. See also *Att.-Gen. v. Dean and Canons of Christ Church*, 2 Russ. 321.

(u) See *Andrews v. McGuffog*, 11 App. Cas. 313, 324.

(x) See *Att.-Gen. v. Wax Chandlers' Co.*, L. R. 6 H. L. 1.

(y) *Att.-Gen. v. Corporation of Exeter*, 2 Russ. at p. 54; 3 Russ. 396; *Att.-Gen. v. Winchester*, 3 L. J. O. S. Ch. 64; *Att.-Gen. v. Stationers' Co.*, 9 L. J. O. S. Ch. 229; *Att.-Gen. v. Caius Coll.*, 2 Keen, 160; *Att.-Gen. v. Drapers' Co.*, 4 Beav. 67; *ibid.* 10 Beav. 558; *Att.-*

Gen. v. Christ's Hospital, 4 Beav. 73; *Att.-Gen. v. Wax Chandlers' Co.*, *supra*, at p. 15. Cf. *Att.-Gen. v. Rigby*, 3 P. Wms. 145; and as to Scotch law, *University of Aberdeen v. Irvine*, L. R. 1 H. L. Sc. 289; *Lord Advocate v. Drysdale*, 2 *ibid.* 368.

(z) *Att.-Gen. v. Burgesses of East Retford*, 2 My. & K. 35, 37; *Att.-Gen. v. Corporation of Berwick-upon-Tweed*, Taml. 239; and see *Att.-Gen. v. Jolliffe*, 1 L. J. O. S. Ch. 43; *Att.-Gen. v. Winchester*, 3 L. J. O. S. Ch. 64.

(a) *Att.-Gen. v. Drapers' Co.*, 6 Beav. at pp. 389, 390. See also *Att.-Gen. v. Davey*, 19 Beav. at p. 527.

neous application was made known. . . . Other cases in which it has been directed from the time of filing the information; and others from the date of the decree. Those three periods of time have, according to the various circumstances of each case, been adopted."

Where a schoolmaster had received all the surplus income of the school for his own use, in the belief that he was entitled so to do, no account was directed against him (b). Schoolmaster.

But a master of a hospital who had received fines for renewals of leases was held to be chargeable with the difference between the rent reserved and the rack rent from the date of the report up to the expiration of the leases (c). Master of hospital.

The circumstance of the trustees being a corporate body rather increases than diminishes the disposition to construe their proceedings leniently. Although in contemplation of law the identity of a corporation is preserved through ages, yet to deal with it as with an individual trustee, and to take the accounts during the whole period of its trusteeship, would, in fact, be to visit the present members with the sins of their predecessors (d). Innocent mis-application by corporation.

Leach, M. R., observed (e): "If an individual makes an annual payment for a particular purpose out of the profits of his estate, it is reasonably to be presumed, from the strong interest which he has to resist an unfounded demand, that he has inquired into the origin of the claim, and he is therefore fixed with implied notice of all the circumstances which attend it. But the same presumption does not apply to corporators, because, having no immediate personal interest in the application of the profits of the corporate property, they may, without the imputation of culpable negligence, adopt and follow the practice of their predecessors in this respect."

The Court may also, in the exercise of its discretion, decline to direct accounts and inquiries where the prosecution of them would not be beneficial but prejudicial to the interests of the charity, as, for instance, where the matters in question are small, and litigation would be long and expensive (f). Taking of accounts prejudicial to charity.

(b) *Att.-Gen. v. Tufnell*, 12 Beav. 35. See *Att.-Gen. v. Master of Brentwood School*, 1 My. & K. 376.

(c) *Att.-Gen. v. Pretzman*, 4 Beav. 462. It appearing, however, that this would amount to a sum which the defendant could not pay, the matter was referred to the Attorney-General.

(d) See per Lord Brougham in *Att.-Gen. v. Mayor of Newbury*, 3 My. & K. at p. 651; *Att.-Gen. v. Caius Coll.*, 2

Keen, at p. 169. See also *Att.-Gen. v. Balliol Coll., Oxford*, 9 Mod. at pp. 409, 410; *Lord Provost, &c. of Edinburgh v. Lord Advocate*, 4 App. Cas. 823.

(e) *Att.-Gen. v. Burgesses of East Retford*, 2 My. & K. at p. 38.

(f) *Att.-Gen. v. Shearman*, 2 Beav. 104. See also *Att.-Gen. v. Dixie*, 13 Ves. 619; *Att.-Gen. v. Cullum*, 1 Keen, 104.

Trustee Act,
1888.

An important change in the law with regard to the liability of trustees to account has been made by the Trustee Act, 1888 (*g*).

Sect. 8 of that Act provides that, with regard to any action or proceedings commenced after the 1st of January, 1890, the Statutes of Limitations shall apply between a trustee or any person claiming under him and the *cestuis que trust*, unless the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use.

If the action or proceeding is brought to recover money or other property, and is one to which no existing Statute of Limitations applies, the trustee or person claiming through him is to be entitled to the benefit of, and may plead the lapse of time as a bar to the proceeding to the same extent as if the claim had been in an action of debt for money had and received.

Time does not run against a beneficiary until his interest is in possession (*h*).

No account
where no
neglect or
error alleged.

In the absence of any allegation of neglect or error, it must be assumed that the trustees have faithfully discharged their duty, and no account can be directed against them (*i*).

Trustees
acting in
rotation.

In *Att.-Gen. v. Holland* (*j*), A., B., C., and D. were co-trustees of a charity under a will, which directed that one trustee in rotation should be the acting trustee for the current year, and should keep the accounts. A., being the acting trustee in a particular year, applied some of the funds to his own use, without the knowledge of the other trustees. A. was succeeded by, and delivered his accounts to B., who delivered his accounts in like manner to C., the next acting trustee. It was held that D. was not liable for the breach of trust committed by A.

Official
trustees.

The Official Trustees of Charitable Funds are not accountable for any loss or misapplication of charity funds unless occasioned by their wilful neglect or default (*k*).

Reformed
municipal
corporations
liable for
breaches of
trust of old
ones.

The municipal corporations created under the Municipal Corporations Act, 1835 (*l*), are continuations of the old corporations, and succeed to their debts, duties, estates, property, and rights (*m*). Therefore, where breaches of trust had been committed by an old corporation, the new corporation was held liable (*n*).

(*g*) 51 & 52 Vict. c. 59.

(*h*) Sect. 8, sub-s. 1 (b).

(*i*) *Att.-Gen. v. Earl of Stamford*, 1 Ph. at p. 747.

(*j*) 2 Y. & C. Ex. 683.

(*k*) Charit. Trusts Act, 1800, s. 17, post.

(*l*) 5 & 6 Will. IV. c. 76.

(*m*) *Att.-Gen. v. Corporation of Leicester*, 9 Beav. 548. See *Att.-Gen. v. Kerr*, 2 Beav. 420; *Att.-Gen. v. Corporation of Newcastle*, 5 Beav. at p. 314.

(*n*) *Att.-Gen. v. Corporation of Leicester*, supra.

Where a decree has declared that a corporation is liable to make good the loss occasioned by a breach of trust, the Court does not specifically charge the loss upon the general corporate property, but leaves the plaintiff to enforce his remedy by the usual process of sequestration against the corporation (*o*). Property of corporation, how attached.

A retrospective account cannot be directed against a parish, nor can the existing parish officers be made liable for breaches of trust committed by their predecessors. Where the government of a charity has been carried on by the parish authorities, the remedy for breaches of trust can only be against the individuals who committed them (*p*). No account against parish.

A defaulting trustee is usually charged with interest at four per cent. There are cases, however, in which he is charged with interest at five per cent. These are where he ought to have received more than four per cent., where he has in fact received more, and where he is presumed to have received more (*q*). The latter case arises where the trustee has employed the funds in trade (*r*). Interest.

Where a charity trustee had employed the funds in trade, Shadwell, V.-C., refused to charge him with compound interest (*s*). But the more recent decisions with regard to private trustees seem to show that in most cases compound interest is charged where the money has been employed in trade (*t*). Compound interest.

Where the trustee claimed as owner, and set up a title adverse to the charity, he was charged with annual rests (*u*).

Where the trustees of a charity have intermixed the charity lands with other land not belonging to the charity, so that the boundaries cannot be distinguished, the practice formerly was to issue a commission to ascertain what part of the land belonged to the charity and what did not (*x*). Ascertaining boundaries.

(*o*) See *Att.-Gen. v. Burgessess of East Relford*, 3 My. & C. 484, overruling the decision of *Leach, V.-C.*, 2 My. & K. 35, who had directed inquiries into the corporate property and the special trusts to which it was subject, with the view of charging the loss upon such portions of that property as were not subject to special trusts: *Att.-Gen. v. Mayor, &c., of Newark-upon-Trent*, 1 Hare, 395.

(*p*) *Ex parte Fowler*, 1 J. & W. 70; and see note to that case at p. 73. It appears that in some old cases the Court of Chancery decreed payment of money to be raised by a parish rate: *James v. Rich*, Feb. 26, Car. II., cited *Proc. Ch.* 43; *Birch v. Barston*, 2 Will. & M. *ibid.*; *Nicholson v. Masters*, 4 Vin. Abr. 529; *Case of Radnor Parish*, *ibid.*; *Blackbourn v. Webster*, 2 P. Wms. 632.

But those decisions have not been supported by subsequent cases: *Battily v. Cooke*, 2 Vern. 262; *Greenfield v. Reynall*, 2 P. Wms. 634, n.; *French v. Dear*, 5 Ves. 547.

(*q*) *Lewin on Trusts*, 8th ed. pp. 341, 342.

(*r*) *Att.-Gen. v. Solly*, 2 Sim. 518.

(*s*) *Att.-Gen. v. Solly*, *supra*.

(*t*) *Heighington v. Grant*, 5 My. & C. 258; *Jones v. Foxall*, 15 Beav. 388; *Williams v. Powell*, *ibid.* 461; *Burdick v. Garrick*, L. R. 5 Ch. 233; *Gilroy v. Stephens*, 51 L. J. Ch. 834.

(*u*) *Incorporated Society v. Richards*, 1 Dr. & W. 258.

(*x*) *Att.-Gen. v. Bowyer*, 5 Ves. 300; *Att.-Gen. v. Stephens*, 6 De G. M. & G. 111. See also *Sol.-Gen. v. Corporation of Bath*, 18 L. J. Ch. 275.

So, also, if a tenant of charity lands failed to keep the boundaries of the lands demised distinct, a similar commission would issue (y).

And where the land of the charity could not be specifically restored, it was ordered to be replaced by other land of equal value (z).

In *Reresby v. Farrer* (a), where a lease of charity land was set aside on the ground of undervalue, a commission was directed to set out and ascertain the charity lands from other lands of the lessees, the same lying intermixed.

Present
practice.

Under the modern practice, an inquiry at chambers is directed instead of a commission (b).

Accretions.

Land subsequently acquired by charity trustees adjoining and annexed to the charity property, there being no distinct proof as to the funds out of which it was purchased, will not, at all events in cases in which the back rents would not be followed, be treated as belonging to the charity.

*Att.-Gen. v.
Wax Chand-
lers' Co.*

In *Att.-Gen. v. Wax Chandlers' Co.* (c), the company had in 1790 purchased a small piece of land adjoining the devised land and built upon it, so that the original and the purchased property formed one whole, and it was held that, in the absence of proof that the added property had been purchased out of the charity funds, it must be treated as belonging to the company, and an inquiry was directed to distinguish the two properties.

Lord Cairns said (d): "To take possession of that new purchase for the purpose of charity would, as it seems to me, be nothing short of following the back rents (as they are termed) received by the charity and taking possession of them at the present time."

*Re Ambleside
Charity.*

In *Re Ambleside Charity* (e), trustees holding a market "for the use of the poor" under a charter of James II. had acquired other property which was used in connection with the market. It was held by Malins, V.-C., that the onus was on the trustees to prove that such land had not been purchased with funds of the charity, and that if that onus was not discharged the additional property would be treated as an accretion to the charity.

Funds of
charities
intermixed.

Where the funds of one charity have become inextricably mixed with those of another, so that it cannot be ascertained what part of the existing estate belongs to the one and what part to the other, the

(y) *Att.-Gen. v. Fullerton*, 2 V. & B. 263. With regard to agreements for settling the boundaries of lands of ecclesiastical and collegiate corporations, see 2 & 3 Will. IV. c. 80.

(z) *Att.-Gen. v. Fullerton*, *supra*.
(a) 2 Vern. 414.

(b) *Spike v. Harding*, 7 Ch. D. 871. For the practice as to commissions to ascertain boundaries, see Set. 4th ed. p. 1033; Dan. C. P. 6th ed. pp. 1361 *et seq.*

(c) L. R. 6 H. L. 1.

(d) At p. 23.

(e) 18 W. R. 663.

present estates must be divided between the two charities in the proportion which the original property of the one bore to that of the other, so that if there has been any increase of value, each of the charities may share in the benefit of it (*f*).

Again, where the trustees had applied charity funds with others in the purchase of land, it was held that the charity was entitled to such a proportion of the purchased property as the purchase-money contributed by the charity bore to that contributed from other sources (*g*).

Land purchased partly with charity funds.

Where portions of the capital have been applied to purposes which should have been satisfied out of income, provision will be made for the replacement out of future income of the capital sums so expended (*h*).

Recouping capital out of income.

Sometimes the Court, in the exercise of its discretion, refers the case to the consideration of the Attorney-General (*i*); and the Court does not consider that it is always the duty of the Attorney-General to contend for his strict rights. In cases of hardship it sanctions his acting with forbearance towards the parties, and will postpone its decision to give the parties an opportunity of entering into an arrangement with him (*k*).

Reference to Att.-Gen.

This course was adopted in *Att.-Gen. v. Brettingham* (*l*). In that case Lord Langdale, at the conclusion of his judgment, expressed a hope that every Attorney-General, whilst he acted in the vigorous discharge of his duty to redress breaches of trust, would consider it his duty to act considerately and with forbearance in proper cases. The law armed him with great power, and enabled him to bring parties before the Court without the peril of costs. That power was intended for the benefit of the public, and ought to be used, as it generally was, with forbearance and without oppression to individuals.

The Board of Charity Commissioners may sanction a compromise of claims on behalf of (*m*) or against (*n*) a charity, either without taking or without continuing proceedings at law or equity.

Charity Commissioners may sanction compromise.

(*f*) *Lord Provost, &c. of Edinburgh v. Lord Advocate*, 4 App. Cas. 823.

(*g*) *Att.-Gen. v. Corporation of Newcastle*, 5 Beav. 307, 318.

(*h*) *Andrews v. M'Guffog*, 11 App. Cas. 313, 329, 330. See also *ante*, pp. 265, 266.

(*i*) *Att.-Gen. v. Pretymman*, 4 Beav. at p. 467.

(*k*) See *Att.-Gen. v. Corporation of Exeter*, 2 Russ. 370, where Lord Eldon referred it to the Attorney-General to consider whether it would be proper for the charity to accept a less sum than

that found due. The Attorney-General having certified that it was proper to accept a less sum, his certificate was afterwards confirmed and acted on by the Lord Chancellor. See also *Att.-Gen. v. Corporation of Carlisle*, 4 Sim. 272; *Att.-Gen. v. Pretymman*, 4 Beav. 462; *Att.-Gen. v. Tufnell*, 12 Beav. 35; and *post*, p. 319.

(*l*) 3 Beav. 91, 96.

(*m*) *Charit. Trusts Act, 1853*, s. 23, *post*.

(*n*) *Charit. Trusts Amend. Act, 1855*, s. 31, *post*.

Stranger
joining in
breach of
trust.

A third person who assists in the committal of a breach of trust renders himself personally responsible.

"If a stranger has property belonging to a charity in his possession and refuses to deliver it up, he makes himself a *quasi* trustee, and though a self-constituted trustee, he is a proper party to a suit instituted by the Attorney-General, whether *ex officio*, or at the relation of private individuals, to compel him to account for and deliver up the property of the charity" (o).

Thus, where a municipal corporation were trustees of a charity, and they permitted their town clerk to receive and retain the trust moneys instead of seeing them applied to the purposes of the trust, it was held that the town clerk and the corporation were both liable for the breach of trust (p).

Governors,
committeemen,
&c.

Governors, committeemen, and other officers are similarly personally responsible for funds misapplied by them or lost through gross negligence (q).

Mere agent
only account-
able to
principal.

The case of a charity is, however, no exception to the rule that an agent is liable to account only to his principal. Thus, where the trustee of a charity managed its affairs by an agent, who received the income and had the title deeds in his possession, it was held that he was not a proper party to an information for an account and scheme (r).

Damages not
given out of
charity fund.

The person injured by a breach of trust committed by the trustees of a charity, has no right to be indemnified by damages out of the trust fund (s).

(o) *Att.-Gen. v. Earl of Chesterfield*,
18 Beav. at p. 599.

(p) *Att.-Gen. v. Corporation of Leicester*,
7 Beav. 176.

(q) *Charit. Corporation v. Sutton*, 2
Atk. at p. 405; *Att.-Gen. v. Wilson*,

Cr. & Ph. 1.

(r) *Att.-Gen. v. Earl of Chesterfield*,
18 Beav. 596.

(s) *Fcoffees of Heriot's Hospital v. Ross*, 12 Cl. & F. 507.

CHAPTER XI.

PATRONAGE, OR THE RIGHT OF NOMINATING THE OBJECTS OF A CHARITY.

IN the absence of any direction expressed or implied in the instrument of foundation, the founder and his heirs have the right of nominating the objects of the charity. Thus, if a man founds an almshouse, the founder and his heirs have the nomination of the almspeople (a).

Nomination of objects by founder and his heirs.

Where a person seised in fee of land, granted a rent-charge thereout as a charity for the support of poor persons, and afterwards aliened the fee simple, it was held that the right to nominate the persons to partake of the charity remained with the grantor and his heirs, and did not pass to the grantee of the land, on the ground that a rent-charge is a thing independent and collateral, and not, like a rent service, incident to the reversion (b).

Charitable rent-charge.

The founder or his heirs may, it is said, forfeit the right to nominate the objects of a charity by a corrupt or improper nomination, or by neglecting to nominate, but there can be no neglect until the founder or his heirs have had notice of the vacancy (c).

Forfeiture of right by corrupt nomination or neglect.

The founder may confer the right of patronage upon others, either expressly or by implication. Thus, where there was a devise to the dean and canons of Christ Church, Oxford, in trust to constitute and support a grammar school at Portsmouth, to appoint a master and usher, and pay them certain salaries, and the testator ordered that the dean and canons should, from time to time, order and direct the management of the said school, Lord Eldon held that the dean and canons had power to nominate the free scholars (d). "The testator," observed his Lordship (e), "has given the direction and management of the school to the dean and canons, and they

Founder may confer right of patronage on others.

(a) *Att.-Gen. v. Leigh*, 3 P. Wms. 146, n.

(b) *Att.-Gen. v. Rigby*, 3 P. Wms. 146.

(c) See per Lord Parker in *Att.-Gen. v. Leigh*, 3 P. Wms. 146, n.

(d) *Att.-Gen. v. Dean and Canons of Christ Church*, Jac. 474.

(e) At p. 486.

are therefore the persons to nominate and appoint the scholars, and I do not know how any restriction on their power can be introduced. Is it not part of the management to nominate and send to the school the persons who are to be educated?"

Alienation of patronage.

The right of patronage is capable of alienation. Where a grammar school was founded and endowed under letters patent which ordained that the school should be altogether in the patronage and disposition of the founder and his heirs, and that the schoolmasters and guardians should be nominated by them for ever, it was held that the right of nomination might lawfully be alienated (*f*).

So, where a testator bequeathed a sum to a trustee, upon trust to lay it out in lands for the endowment of a school, and appointed that the trustee and his heirs "should be feoffees in trust and patrons and protectors of the said school for the electing a fit and sufficient schoolmaster," Romilly, M. R., held that the right of patronage was alienable (*g*). "I am of opinion," said his Honour, "that the case of *Att.-Gen. v. Master of Brentwood School* governs this case, and that the right of patronage is quite as much within the power of alienation as it was in that case, and that no distinction arises from the fact that the property here is given in trust, and that the feoffees take it in trust for the purposes of a school, and that they are to be 'the patrons and protectors of the school.' That gives them the power of appointment in the first instance, and it is impossible to say that it is more a trust in one case than in another. If the power is given, as it was in the case of *Brentwood School*, directly to appoint the schoolmaster, it is still a trust to be performed, for it is clear that the patron could not appoint a person manifestly unfit, as, for instance, a person of unsound mind or an infant; he must appoint a person who is fit and proper for the purpose of carrying on the school, and to that extent, and no further, it is a trust in every such case."

Jus patronatus incident to manor.

Where the owner of a manor has, as incident to it, the right of patronage in appointing the master and almspeople of a hospital, he may alien the *jus patronatus* without parting with the manor (*h*). Conversely, he can alien the manor without parting with the *jus patronatus* (*i*).

Right of minister,

It was held in *Att.-Gen. v. Drapers' Co.* (*k*) that the right to elect

(*f*) *Att.-Gen. v. Master of Brentwood School*, 3 B. & Ad. 59.

(*g*) *Att.-Gen. v. Boucherett*, 25 Beav. 116.

(*h*) *Att.-Gen. v. Exelme Hospital*, 17 Beav. 366, 384. It was also held in that case that, upon the attainder of the lord of the manor, the right of appoint-

ment and visitation which he possessed became vested in the Crown, and not extinguished or merged by escheat. Forfeiture for treason or felony was abolished by 33 & 34 Vict. c. 23.

(*i*) *Att.-Gen. v. Exelme Hospital*, *supra*.

(*k*) 4 Dr. 299.

almsmen, which was under the deed of foundation vested in the minister, churchwardens, overseers of the poor, and such of the parishioners as paid poor rates, did not pass to the vestry created by the Metropolis Local Management Act, 1855; for although the meeting for such an election would be a "meeting in the nature of an open vestry" within sect. 3 of 19 & 20 Vict. c. 112, the election of almsmen was not a "duty, power, or privilege" within the section.

parishioners, &c., to elect does not pass to vestry.

A similar decision was arrived at with regard to the right of electing the minister of a parish, which was vested in trustees in trust for the parishioners (*l*).

But where the right of appointing trustees of a charity was vested in "the parishioners and inhabitants of the parish in vestry assembled," it was held to have passed to the new vestry (*m*).

Right vested in "parishioners and inhabitants of the parish in vestry assembled." Agreement to vote.

There is nothing illegal in an agreement between two subscribers to a charity, who have votes at the election of objects of the charity proportioned to the amount of their subscriptions, that if one will give certain votes at one election to an object favoured by the other, the latter will at a future election vote for the object favoured by the former (*n*).

The giving of the votes by the one is, in such a case, a legal consideration for the promise by the other, and the contract will accordingly be enforced (*o*).

In selecting the objects to partake in the benefits of a charity, regard must be paid to any qualifications required by the instrument of foundation or scheme.

Selection of charitable objects.

Where a scheme for a charity for the presentation of exhibitions to a university provided that two exhibitioners should be elected from boys "who shall have been" three years at a certain school, it was held that the three years must be those immediately preceding the election (*p*).

Exhibitions.

If the direction is that scholars are to be elected by competitive examination, with a preference, *cæteris paribus*, to a person possessing a certain qualification, it is only where the difference between two candidates is so slight that they are substantially equal that the direction as to preference can operate. Where the difference between two candidates is considerable, the competitive test must alone be regarded (*q*).

Competitive examination.

(*l*) *Carter v. Cropley*, 8 De G. M. & G. 680.

(*m*) *Re Hayle's Estate*, 31 Beav. 139.

(*n*) *Bolton v. Madden*, L. R. 9 Q. B. 55. See *Worthington v. Hargood*, 27 L. T. N. S. 786, where the question was with regard to the election of the medical

officer of an infirmary by the votes of the governors.

(*o*) *Bolton v. Madden*, *supra*.

(*p*) *Re Storie's University Gift*, 2 De G. F. & J. 529. Cf. *Re Rugby School*, 1 Beav. 457.

(*q*) *Re Nettle's Charity*, L. R. 14 Eq.

Immaterial
how qualifica-
tion acquired.

Where a particular qualification is required in the objects of a charity, the question is simply whether a proposed object possesses that qualification or not. If he does, it is of no consequence that he expressly and avowedly obtained it for the purpose of enabling him to partake in the charity (*r*).

"Parish-
ioner."

Thus where the object of a charity was the election to Christ's Hospital of the sons of parishioners of a certain parish, it was held that the son of a person who answered the description of "parishioner" was a proper object, although he had become a parishioner temporarily in order to acquire the qualification (*s*).

Compliance
with religious
provisions.

So, also, where compliance with certain religious directions is a necessary qualification for partaking of the charity, any persons who comply with the directions are proper objects, and the trustees cannot proceed to inquire whether the compliance is sincere (*t*).

Persons
erroneously
elected not
removed.

Persons *bonâ fide* elected under a mistaken interpretation of a scheme are not removed (*u*).

Improper
election set
aside.

In a proper case, however, an improper election may be set aside (*x*). This may be done on petition under Romilly's Act (*y*).

Payments to
objects
nominated
by wrong
persons
allowed.

Where nominations have been made by the wrong persons, payments to the objects of the charity will nevertheless be allowed. Thus where the heirs of the grantor, and not the grantees, were the persons to nominate the objects of the charity, and the grantees had for upwards of sixty years enjoyed the nomination of the persons who had partaken of the charity, it was held that they ought to be allowed all the payments they had made to any of the poor, though nominated by themselves; and the Court refused to disturb anything that had been already done (*z*).

434. The examination for a close fellowship is merely to ascertain the fitness of the candidate, and no regard can be had to the comparative qualifications of others: *Ex parte Inge*, 2 R. & M. 590.

(*r*) *Etherington v. Wilson*, 1 Ch. D. 160. Cf. *Att.-Gen. v. Calvert*, 23 Beav. at p. 261.

(*s*) *Etherington v. Wilson*, *supra*. For the meaning of "parishioner" see *ante*, p. 208, and Note B to App. III., *post*.

(*t*) *Att.-Gen. v. Calvert*, 23 Beav. at p. 261.

(*u*) *Re Storie's University Gift*, 2 De G. F. & J. 529. Cf. *Att.-Gen. v. Hartley*, 2 J. & W. 353; *Att.-Gen. v. Daugars*, 33 Beav. 621.

(*x*) *Re Nettle's Charity*, L. R. 14 Eq. 434.

(*y*) *Ibid*.

(*z*) *Att.-Gen. v. Rigby*, 3 P. Wms. 145.

CHAPTER XII.

PROCEDURE AND COSTS.

SECTION I.

ACTIONS.

THE ordinary mode of proceeding in Chancery was by information (a). The information was in the name of the Attorney-General, either acting *ex officio* as the officer of the Crown, or *ex relatione* at the instance of a relator or relators. Information.

If the Attorney-General was a defendant or ill, or the office was vacant, an information might be filed by the Solicitor-General (b).

There were also, as will be seen, cases in which the proper form of proceeding was by bill or by bill and information. Bill or bill and information.

Under the present practice the title "information" is not used (c). All proceedings which, prior to the Judicature Act, 1873 (d), were commenced by information, whether by the Attorney-General only or by the Attorney-General and a relator, or by bill or by bill and information, are now commenced by writ of summons and are called "actions" (e). Action.

The procedure is regulated by the Rules of the Supreme Court, 1883. But by Ord. LXXII. r. 2, where no other provision is made by the Judicature Acts or the Rules, the former practice remains in force. Procedure governed by R. S. C. 1883.

It was formerly usual to introduce a relator in charity informations in order that there might be somebody before the Court who could be made answerable for costs (f). But there was never an imperative rule in this respect, and the Attorney-General was Relator.

(a) See *ante*, pp. 88, 89.

(b) *Rex v. Wilkes*, 4 Burr. 2554; *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. at p. 51.

(c) *Att.-Gen. v. Shrewsbury Bridge Co.*, W. N. 1880, 23.

(d) 36 & 37 Vict. c. 66.

(e) R. S. C. 1883, Ord. I. r. 1; Dan. C. P. 6th ed. p. 64, n. (a).

(f) *Att.-Gen. v. Brown*, 1 Swanst. at p. 305 n.; *Re Bedford Charity*, 2 *ibid.* at p. 520; *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. at p. 48; *Att.-Gen. v. Mayor of Dublin*, *ibid.* at pp. 351, 352. In *Att.-Gen. v. Boucherett*, 25 Beav. at p. 120, Romilly, M. R., expressed a strong opinion that in a contested case the Attorney-General ought to require

always at liberty, if he thought right, to proceed without a relator (*g*).

Now seldom introduced.

Under sect. 17 (*h*) of the Charitable Trusts Act, 1853, a relator's action can never be commenced unless the certificate of the Charity Commissioners has been previously obtained. In practice the Commissioners never authorize proceedings of this kind. When they consider it necessary that an action in the nature of an information should be instituted, they certify the case to the Attorney-General (*i*), who then proceeds *ex officio*. The reason of this is, that it is considered desirable that the proceedings should be under the complete control of the Attorney-General (*k*).

The Attorney-General might, however, require a relator to be introduced, even in cases certified by the Charity Commissioners (*l*).

Who may be relators.

Any person not under disability, and not shown to be in indigent circumstances (*m*), may be a relator, and there may be more relators than one (*n*). It is not necessary that a relator should be interested in the charity (*o*); for it is not likely that such right would be improperly exercised, inasmuch as, in addition to the approbation of the Attorney-General being required, a relator subjects himself to a liability for costs. Any or all of the trustees may be relators, even though the action be for the purpose of setting aside their own deliberate acts (*r*).

Authority to use name.

The relator must sign a written authority to the solicitor to use his name as relator, and such authority must be filed in the central office or district registry, as the case may be (*s*).

a relator to be introduced for the purpose of securing costs. It is conceived, however, that the necessity of having a person responsible for costs present is less cogent now than it formerly was, because the fact that proceedings of this kind cannot be instituted without the certificate of the Charity Commissioners is a guarantee that they will not be commenced except in cases where they are really necessary. Valuable information as to proceedings in the Court of Chancery is contained in the evidence of Mr. Wickens and Mr. Fearon given before the Schools Inquiry Commission of 1867. See Vol. 5 of the Report, pp. 434—463. As to the Attorney-General not paying costs, see *post*, p. 344.

(*g*) *Re Bedford Charity*, 2 Swanst. at p. 520; *Att.-Gen. v. Mayor of Dublin*, 1 Bli. N. S. at p. 337; *Mucklow v. Att.-Gen.*, 4 Dow, at p. 15. See, however, *Att.-Gen. v. Oglender*, 1 Ves. Jun. 246.

(*h*) *Post*.

(*i*) See *Charit. Trusts Act*, 1853, s. 20, *post*.

(*k*) See *Schools Inquiry Commission*

Rep., Vol. 5, p. 439.

(*l*) See *Att.-Gen. v. Bouchereff*, 25 Beav. 116, where the case was certified by the old Charity Commissioners; and see *Charit. Trusts Act*, 1853, s. 20, *post*.

(*m*) *Felloices v. Barrett*, 1 Keen, at p. 120; *Dan. C. P.* 6th ed. p. 65.

(*n*) *Att.-Gen. v. Earl of Clarendon*, 17 Ves. 491.

(*o*) *Att.-Gen. v. Bucknall*, 2 Atk. 328; *Att.-Gen. v. Tivian*, 1 Russ. at p. 236. See, however, *Att.-Gen. v. Oglender*, 1 Ves. Jun. 246.

(*r*) *Att.-Gen. v. Griffith*, 13 Ves. 565, where the information was for the purpose of setting aside a long lease of charity estates; *Att.-Gen. v. Talbot*, cited *ibid.* at p. 571.

(*s*) R. S. C. 1883, Ord. XVI. r. 20; for form of authority, see *Dan. Forms*, 4th ed. p. 28. In an urgent case, leave was given to file an information without the authority of the relator, an undertaking being given to file the authority the next day and to take no proceedings in the meantime: *Att.-Gen. v. Murray*, 13 W. R. 65.

The death of one of several relators does not affect the action, *New relator.* but if all the relators die, or if there is but one, and he dies or becomes lunatic, the Court will restrain further proceedings until a new relator has been appointed (*t*). Otherwise there would be no person who could be made liable for costs (*u*).

If the relator has an individual interest in the relief sought, in respect of an injury to which he has a right to complain, he must be plaintiff as well as relator. Under the practice of the Court of Chancery such a proceeding was said to be an information and bill (*x*). *Relator also plaintiff.*

It has been held that a relator who is also a plaintiff cannot be heard in person. He has no right to be heard as relator, because then he would be appearing on behalf of the Attorney-General (*y*); nor can he be heard on his own behalf as plaintiff, because the proceeding in which he is plaintiff cannot be separated from that in which he is relator (*z*). *Relator plaintiff not heard in person.*

A relator's action is the action of the Attorney-General (*a*), and the Attorney-General has control over the proceedings (*b*). *Control of Att.-Gen.*

No amendment can be made without his sanction (*c*), and he may at any time stay the proceedings (*d*).

Similarly, a notice of motion on behalf of a relator is irregular; it should be on behalf of the Attorney-General (*e*).

Where after a decree in a suit a special petition was presented by the relators in the name, but without the authority, of the Attorney-General, the Court first directed the Attorney-General to be served, and, at the hearing, ordered the petition to stand over, with a request to the Attorney-General to certify the course he thought desirable to adopt on the petition. The relators appealed, when the Attorney-General asked that the petition might be dis-

(*t*) *Att.-Gen. v. Powell*, Dick. 355; *Att.-Gen. v. Tyler*, 2 Eden, 230; *Att.-Gen. v. Haberdashers' Co.*, 15 Beav. 397.

(*u*) *Att.-Gen. v. Smart*, 1 Ves. Sen. 72; *Att.-Gen. v. Middleton*, 2 Ves. Sen. 327. The order for a new relator must be obtained by the Attorney-General or with his consent: *Att.-Gen. v. Plumtree*, 5 Madd. 452. For form of a petition of course for a new relator, see Dan. Forms, 4th ed. p. 30. Where a relator who is also plaintiff dies, and his interest does not survive to another plaintiff, an order to carry on the proceedings must be obtained: R. S. C. 1883, Ord. XVII.; Dan. C. P. 6th ed. 67.

(*x*) *Att.-Gen. v. Heslia*, 2 S. & S. 67; *Att.-Gen. v. Vivian*, 1 Russ. 226; Dan. C. P. 6th ed. 64.

(*y*) *Post*, p. 319.

(*z*) *Att.-Gen. v. Barker*, 4 My. & C. 262.

(*a*) *Att.-Gen. v. Ironmongers' Co.*, 2 Beav. at pp. 328, 329. The regulations of the Attorney-General as to obtaining his authority to commence a relator's action, &c. will be found in Dan. Forms, 4th ed. pp. 28, 29.

(*b*) *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. at p. 65; *Att.-Gen. v. Ironmongers' Co.*, *supra*; *Att.-Gen. v. Haberdashers' Co.*, 15 Beav. 397.

(*c*) *Att.-Gen. v. Fellows*, 1 J. & W. 264, where an information amended without the sanction of the Attorney-General was taken off the file.

(*d*) *Att.-Gen. v. Mayor, &c. of Newark-upon-Trent*, 1 Hare, at p. 399; *Att.-Gen. v. Brettingham*, 3 Beav. at p. 95.

(*e*) *Att.-Gen. v. Wright*, 3 Beav. 447.

missed, which was done, notwithstanding the opposition of the relators (*f*).

Reference. Similarly, the action will not be referred to arbitration unless the Attorney-General consents to the reference (*g*).

It was held that a reference would not be allowed for the purpose of deciding upon the construction of a will (*h*). But where there was an information seeking relief for an alleged breach of trust, a reference was allowed with the consent of the Attorney-General (*i*).

Enforcing award. Nor will an award be acted upon without the consent of the Attorney-General, or an inquiry to determine whether it is for the benefit of the charity (*k*).

In *Att.-Gen. v. Clements* (*l*) Lord Eldon said, that formerly the Court of Chancery had been more in the habit of giving effect to awards than at that day it was accustomed to do.

In the last-mentioned case, by an award confirmed by a decree of the Court, a charitable corporation had been directed to grant certain renewable leases. Upon a petition presented to enforce the renewal of a lease upon the terms of the award, Lord Eldon said that the jurisdiction was doubtful. But, inasmuch as in the case of that charity jurisdiction had twice been assumed by Lord Hardwicke, he acted upon the award, considering that it was only to be disturbed by the House of Lords (*m*).

Compromise. Similarly, when the Attorney-General is a party to a charity action his consent is required to a compromise, and when that is obtained the compromise will be enforced (*n*).

In one case, the question was whether a devise and bequest to a charity was void under 9 Geo. II. c. 36 (*o*), and an agreement between the next of kin and the governors of the charity that the next of kin should take one-fourth and the governors three-fourths was carried into execution by the Court (*p*).

Att.-Gen. and relator cannot appear separately. On the principle that a relator's action is the action of the Attorney-General, the Attorney-General and the relator cannot appear separately (*q*).

(*f*) *Att.-Gen. v. Wyggeston's Hospital*, 16 Beav. 313.

(*g*) *Att.-Gen. v. Fea*, 4 Madd. 274; *Att.-Gen. v. Hewitt*, 9 Ves. 232. And see *Prior v. Hembrow*, 8 M. & W. 873.

(*h*) *Att.-Gen. v. Fea*, *supra*.

(*i*) *Ibid.*; *Att.-Gen. v. Hewitt*, *supra*.

(*k*) *Att.-Gen. v. Hewitt*, *supra*.

(*l*) T. & R. at p. 61.

(*m*) *Ibid.* at pp. 61, 62.

(*n*) *Andrew v. Merchant Taylors' Co.*, 7 Ves. 223; *Andrew v. Trinity Hall*,

Cambridge, 9 Ves. at pp. 532, 533; *Att.-Gen. v. Fishmongers' Co.*, C. P. Coop. 85; *Att.-Gen. v. Boucheratt*, 25 Beav. 116; *Att.-Gen. v. Corporation of Ludlow*, 6 Jur. 1003.

(*o*) Now Part II. of the Mortm. and Charit. Uses Act, 1888, *post*.

(*p*) *Att.-Gen. v. Lauderfield*, 9 Mod. 286; *Att.-Gen. v. Trevelyan*, 16 L. J. Ch. 521.

(*q*) *Att.-Gen. v. Ironmongers' Co.*, 2 Beav. at p. 328.

The Attorney-General has the right to appear either in person or by counsel (*r*). The relator, on the other hand, has no such right; he can only conduct the case and instruct counsel by the permission of the Attorney-General. But, if that permission is obtained, counsel for the relator also represents the Attorney-General, and the Attorney-General cannot appear independently (*s*).

The Court, however, may, if it thinks fit, direct that the Attorney-General shall be at liberty to attend any proceedings, as the settling of a scheme, separately from the relator (*t*).

"It is always open to the defendants to apply to the Attorney-General, if relators or others should, by misleading him or otherwise, attempt to make an improper or oppressive use of the power vested in the Attorney-General. A defendant who is aggrieved by the proceedings in an information, or who has reason to complain that documents are unjustly withheld from him, may apply to the Attorney-General; and if he found that there would be injustice in going on, while the parties actively proceeding with the suit had in their possession . . . a vast amount of information, the knowledge of which would be beneficial to the defendants, and promote a right determination of the question in dispute, the Attorney-General, having come to that conclusion, would, I do not doubt, take care to give such directions as would be best calculated to further the ends of justice, and give the defendants every protection to which they are entitled" (*u*).

Duty of
Att.-Gen. to
protect de-
fendants.

The Court of Chancery would sometimes submit matters arising out of an information to the consideration of the Attorney-General, and would act upon his certificate stating what he considered the proper course to be pursued. Thus, in one case (*x*), the Court referred it to the Attorney-General to certify whether it would be proper, upon an account extending over a great length of time, for the charity to accept a less sum than the balance stated in the master's report; and the Attorney-General having certified that it would be proper to accept a sum less than one-half of that balance, his certificate was confirmed.

Reference to
Att.-Gen. of
matters arising in the
action.

So, also, it was referred to the Attorney-General to consider what course should be taken with regard to exceptions which had

(*r*) *Att.-Gen. v. Green*, 1 J. & W. at p. 305; *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. at p. 65.

(*s*) *Att.-Gen. v. Governors of Sherborne Grammar School*, 18 Beav. at p. 264; and see *Att.-Gen. v. Ironmongers' Co.*, 2 Beav. at p. 328; *Att.-Gen. v. Dove*, T. & R. 328; *Att.-Gen. v. Barker*, 4 My. & C. 262.

(*t*) *Re Hanson's Trust*, 9 Hare, App. liv.; *Att.-Gen. v. Earl of Stamford*, 1 Ph. at p. 749.

(*u*) *Per Wood*, V.-C., in *Att.-Gen. v. Clapham*, 10 Hare, App. II. p. lxx.

(*x*) *Att.-Gen. v. Mayor of Exeter*, 2 Russ. 362; and see *Att.-Gen. v. Pretymann*, 4 Beav. at p. 467. See also *Att.-Gen. v. Brettingham*, 3 Beav. 91.

been allowed to an answer to an information, and all proceedings were stayed in the meantime (y).

Relaxation of
rules of pro-
cedure.

Relief given
though not
asked.

The Court of Chancery in many instances relaxed in favour of charities the rigour of its rules of procedure.

Lord Hardwicke said (z), that in an information by the Attorney-General for the regulation of a charity, it is the business of the Court to give a proper direction as to the charity, without any regard at all to the propriety or impropriety of the prayer of the information.

Thus, if the wrong relief (a), or no relief at all with regard to particular objects (b), or a particular person (c), was prayed, the Court of Chancery would nevertheless give proper relief (d). And, *a fortiori*, where there was a prayer for general relief (e).

Where, however, an information was filed by a relator on behalf of one charitable institution claiming a legacy, to which it was held that another was entitled, the Court would not, upon that information, give directions how the charity which was entitled should be administered, but dismissed the information, giving no costs out of the charity (f).

Amendment.

Again, under the old practice leave would in charity cases be given to amend, where necessary for the purpose of enabling relief to be obtained. Thus, leave would be given to amend a bill and information by converting it into an information only (g), or to amend a bill by converting it into a bill and information or an information alone (h).

Not to injury
of defendants.

The Court of Chancery would not overlook defects of form where such a course would be prejudicial to defendants. Thus, the Court refused to set aside a decree upon an information which did

(y) *Att.-Gen. v. Corporation of Carlisle*, 4 Sim. 275.

(z) *Att.-Gen. v. Jeanes*, 1 Atk. 355. See *Att.-Gen. v. Lord Gore*, Barnard. at p. 151; *Att.-Gen. v. Gardner*, *ibid.* at p. 490; *Att.-Gen. v. Parker*, 1 Ves. Sen. 43; *Att.-Gen. v. Smart*, *ibid.* 72; *Att.-Gen. v. Coopers' Co.*, 19 Ves. 194, per Lord Eldon.

(a) *Att.-Gen. v. Whiteley*, 11 Ves. at p. 247.

(b) *Att.-Gen. v. Coopers' Co.*, 19 Ves. 194.

(c) *Att.-Gen. v. Brereton*, 2 Ves. Sen. 426.

(d) See *Att.-Gen. v. Parker*, 1 Ves. Sen. 43; *Att.-Gen. v. Scott*, *ibid.* at p. 418; *Att.-Gen. v. Governors of Harrow School*, 2 Ves. Sen. 552; *Att.-Gen. v. Foyster*, 1 Anst. at p. 123; *Att.-Gen. v. Lord Gower*, 9 Mod. at p. 228; *Att.-Gen. v. Mayor of Stamford*, 2 Swanst. 691.

(e) *Att.-Gen. v. Brooke*, 18 Ves. 319,

324; *Att.-Gen. v. Rochester*, 5 De G. M. & G. 797. Under the present practice general relief may always be given whether claimed or not: R. S. C. 1883, Ord. XX. r. 6.

(f) *Att.-Gen. v. Oglender*, 1 Ves. Jun. 246.

(g) *Att.-Gen. v. East India Co.*, 11 Sim. 380; *Att.-Gen. v. Vivian*, 1 Russ. 226; *Att.-Gen. v. Cuming*, 2 Y. & C. C. at p. 149. See also *Att.-Gen. v. Newcombe*, 14 Ves. at p. 6, per Lord Eldon.

(h) *President of St. Mary Magdalen, Oxford v. Sibthorp*, 1 Russ. 154. The present practice with regard to amendment is regulated by R. S. C. 1883, Ord. XXVIII.; and if the sanction of the Attorney-General is obtained (see *ante*, p. 317), an action may, by amendment of the writ and statement of claim, be turned into an action in the nature of an information without prejudice to a pending motion: *Caldwell v. Pagham Harbour, &c. Co.*, 2 Ch. D. 221.

not state or show any intention of attacking it, but the information was dismissed. Plumer, M. R., said, "All the cases show that the Court is careful not to do injury to defendants by overlooking error in form. Would no injury be done here? The information denotes no intention to attack the decree; and can the Court permit the Attorney-General to raise a question in argument not put in issue in the pleadings?" (i).

Nor, of course, would it apply the rule to cases where no charitable use was in question (k).

Although in a charity case the Court would grant the relief which should have been asked, whether it had in fact been asked or not, yet it would take the frame of the suit into consideration in determining the question of costs (l).

In the case of a charity the most expeditious and least expensive methods should be adopted. It was therefore held that an issue ought not to be directed unless the matter could not be determined by the Court of Chancery (m).

And it was held that the Court would not interfere to execute the trusts when such interference would not be beneficial to the charity (n).

The action must not be by the Attorney-General in cases where the trust is not of a charitable nature (o).

There are several cases in which it has been held, apparently on the ground that an advowson held on trust for the parishioners is not charity property (p), that an information with regard to matters relating to such a trust could not be maintained (q). Thus, in one case an information by parishioners to set aside the nomination of a clerk to the bishop by the trustees of an advowson, was held not maintainable (r).

"As to the nomination by the trustees to the bishop, &c., it was all a private suit. . . . the *cestuis que trust* calling upon them to

Or where no charitable use in question.

Frame of suit material as to costs.

Issue not directed where matter could be determined by Court of Chancery. Court will not interfere when not beneficial to charity.

Att.-Gen. does not sue where trust not charitable.

Trusts of advowsons.

(i) *Att.-Gen. v. Warren*, 2 Swanst. 291, 310.

(k) *Att.-Gen. v. Parker*, 1 Ves. Sen. 43.

(l) *Att.-Gen. v. Hartley*, 2 J. & W. at pp. 369, 370.

(m) *Bishop of Rochester v. Att.-Gen.*, 4 Bro. P. C. 643.

(n) *Att.-Gen. v. Bosanquet*, 11 L. J. Ch. 43.

(o) *Att.-Gen. v. Hower*, 2 Vern. 387; *Att.-Gen. v. Whorwood*, 1 Ves. Sen. at p. 536; *Att.-Gen. v. Brereton*, 2 Ves. Sen. at p. 426. See also *Anon.*, 3 Atk. 277; *Att.-Gen. v. Middleton*, 2 Ves. Sen. 327; *Att.-Gen. v. Newcombe*, 14

Ves. at p. 7; *Presney v. Mayor, &c. of Colchester*, 21 Ch. D. 111.

(p) See as to this, *ante*, p. 13.

(q) *Att.-Gen. v. Parker*, 1 Ves. Sen. 43; see, however, the report in 3 Atk. 576; *Att.-Gen. v. Forster*, 10 Ves. 335; *Att.-Gen. v. Newcombe*, 14 Ves. 1; *Fearon v. Webb*, 14 Ves. 13. See also *Edenborough v. Archbishop of Canterbury*, 2 Russ. 93; *Att.-Gen. v. Butler*, *ibid.* 101, n.; *Leslie v. Birnie*, *ibid.* 114; *Att.-Gen. v. Webster*, L. R. 20 Eq. at p. 491.

(r) *Att.-Gen. v. Parker*, *supra*; *Att.-Gen. v. Forster*, *supra*; *Att.-Gen. v. Newcombe*, *supra*.

exercise the legal right in them according to the trust" (s). It was accordingly held that the proceeding should have been by bill and not by information (t).

It has, however, now been held that an advowson held upon trust for the parishioners is charity property (u). And it would seem to follow that an action by the Attorney-General with regard to the execution of the trusts relating to such an advowson would be maintainable.

Trusts of
Dissenting
chapels.

It has also been held in several cases (v) that the regulation and execution of the trusts relating to Dissenting chapels supported by voluntary contributions was the proper subject of a bill, not of an information.

Thus, where there had been a joint purchase of land to hold to the purchasers, their heirs, successors, and assigns for ever in trust to erect a Protestant Dissenting chapel, Lord Eldon held that the regulation of such an establishment, with no fixed revenue, but supported only by voluntary contributions, was the proper subject of a bill, not of an information (w). So, also, where the question before the Court has been whether the election of the minister should be interfered with (x).

In other cases, however, jurisdiction in relation to the trusts of Dissenting chapels has been exercised on information (y), or on information and bill (z).

In one case, where a bill and information were both filed, it was held that they might be severed, the information being dismissed and the bill sustained (a).

Action by
trustees
against
Att.-Gen.

Although the proper form of proceeding to administer the funds of a charity was by information, nevertheless charity trustees might always have filed a bill against the Attorney-General to have the accounts of the charity taken and to be discharged from personal liability. They would, however, be compelled to submit to such account as the Attorney-General would have been entitled to ask against them if they had been defendants. And if the

(s) Per Lord Eldon in *Att.-Gen. v. Forster*, 10 Ves. at p. 344.

(t) *Att.-Gen. v. Newcombe*, 14 Ves. at p. 7.

(u) *Re St. Stephen, Coleman Street*, 39 Ch. D. 492. See also cases cited *ante*, p. 13, where it was held that a trust of an advowson for the parishioners was charitable.

(v) *Davis v. Jenkins*, 3 V. & B. 151; *Foley v. Wontner*, 2 J. & W. 245. And see *Att.-Gen. v. Fowler*, 15 Ves. 85.

(w) *Davis v. Jenkins*, *supra*.

(x) *Porter v. Clarke*, 2 Sim. 520; *Leslie v. Birnie*, 2 Russ. 114; *Milligan v. Mitchell*, 1 My. & K. 446; 3 My. & C. 72.

(y) *Att.-Gen. v. Fowler*, 15 Ves. 85; *Att.-Gen. v. Lord Dudley*, G. Coop. 146. And see *Att.-Gen. v. Cock*, 2 Ves. Sen. 273.

(z) *Att.-Gen. v. Gould*, 28 Beav. 485.

(a) *Att.-Gen. v. Cuming*, 2 Y. & C. C. C. at p. 149.

Attorney-General desired it, the Court would direct a reference for a scheme (b).

It may be stated as a general rule that all persons having any interest in the subject-matter of an action relating to charities and within the jurisdiction of the Court should be parties (c).

Where some private right of the Crown, distinct from its right as *parens patriæ* (d), or the right to dispose of a surplus by sign manual (e), comes in question, or where part of property given to charitable uses is infected with a superstitious purpose, it is necessary, although the action be commenced by the Attorney-General as the officer of the Crown, that the Solicitor-General should be made a defendant to support the private interests of the Crown. If, however, in an action between individuals, a question arises as to the right of the Crown to appoint by sign manual a fund given to superstitious uses, the Attorney-General must be made a party (f).

Private right of Crown.

The Attorney-General, as representing the Crown, is the protector of all the persons interested in the charity funds (g). He represents the beneficial interest (h); consequently, in all cases in which the beneficial interest requires to be before the Court, the Attorney-General must be a party to the proceedings (i).

Att.-Gen. represents beneficiaries under charitable trust.

It was accordingly held that if all the subscribers to a charitable fund were plaintiffs, the action would still be defective for want of parties, unless the Attorney-General were also a party (j).

When required to be party.

In *Skinners' Co. v. Irish Society* (k), King James I. had agreed with the City of London to grant lands in Ireland to be colonised by the city, and sums were raised for that purpose by the city from the companies of London. A charter was afterwards granted creating the Irish Society, the members of which were to be appointed by the city, and vesting the lands in them. The greater part of the lands was afterwards divided among the com-

(b) *Governors of Christ's Hospital v. Att.-Gen.*, 5 Hare, 267.

(c) As to one or more of numerous parties having the same interest suing or defending on behalf of all, see R. S. C. 1883, Ord. XVI. r. 9; Dan. C. P., 6th ed., p. 253. Where a bill and information was filed by some of the trustees of a charity against the others only, it was considered that the individuals in respect of whose interest the suit was instituted ought to be parties either collectively or as suing for themselves and the others: *Att.-Gen. v. Fowler*, 15 Ves. 85, 87.

(d) *Att.-Gen. v. Dean and Canons of Windsor*, 24 Beav. at p. 694; 8 H. L. C. 369.

(e) *Att.-Gen. v. Mayor of Galway*, 1 Mol. 106. See *Att.-Gen. v. Ironmongers' Co.*, 2 My. & K. at p. 578, n.; *Att.-Gen. v. Mayor of Bristol*, 2 J. & W. at pp. 309, 310; Dan. C. P., 6th ed., pp. 158, 159.

(f) *De Themmines v. De Bonneval*, 5 Russ. at p. 293.

(g) *Re Sekeford's Charity*, 5 L. T. N. S. 488. And see *ants*, pp. 88, 89.

(h) See *Ware v. Cumberlege*, 20 Beav. at p. 511.

(i) See *Strickland v. Weldon*, 28 Ch. D. at p. 430.

(j) *Ibid.*

(k) 12 Cl. & F. 425.

panies, but some was retained and managed by the Irish Society, the rents and profits being applied for various public purposes, and the residue divided between the companies. It was held that the Irish Society were trustees for permanent public purposes, and were not trustees for the private benefit of the companies, and that though they might be accountable to the Crown and to the City of London for mismanagement they were not accountable to the companies.

Voluntary
society.

The Attorney-General was held not to be a necessary party to a suit for the regulation of a voluntary society constituted to provide by weekly subscriptions for such of the members as should become necessitous and their widows, and Lord Hardwicke said: "This is not such a society as makes it necessary for the Attorney-General in behalf of the Crown to be a party in order to see to the right application of the money, but is in the nature only of a private charity" (l).

Proceedings
to which
Att.-Gen. not
party not
binding upon
him.

And as the Attorney-General is the only person who can represent the general body of beneficiaries under a charitable trust, it follows that no proceedings to which the Attorney-General is not a party are binding upon him as representing the charity, or upon the Court in an action in the nature of an information instituted by the Attorney-General (m).

Adminis-
tration pro-
ceedings.

As to when the presence of the Attorney-General is required in proceedings relating to the administration of estates where there are charitable legacies, Romilly, M. R., laid down the following rules (n): "The Attorney-General represents all absent charities, and it is sufficient to have him here to represent all absent charities. But absent charities may obviously be of two different characters; they may either be under gifts to specified individual charities, or to charity generally. In case the gift is for charity generally, no one can represent it but the Attorney-General, and he must be here to represent such general charities. When there are specified individual charities, then the Attorney-General's presence is not universally necessary; but it is required by the Court upon various occasions, as, for instance, where any rules are required for the regulation of the internal conduct of the charity itself, such as the establishment of a scheme and the like; there the Attorney-General is necessary for the purpose of aiding and assisting the Court in

(l) *Anon.*, 3 Atk. 277. See, however, *Spiller v. Maude*, 32 Ch. D. 158, n., and *Pease v. Pattinson*, *ibid.* 154, in both of which cases the Attorney-General was present: *Brown v. Dale*, 9 Ch. D. 78.

(m) See *Att.-Gen. v. Leage*, App. III. to this Book, *post*. See also *ante*, p. 298.

For a case in which the Attorney-General would not have been a proper party to the earlier proceedings, see *Att.-Gen. v. Warren*, 2 Swanst. 291, 311, 312.

(n) *Ware v. Cumberlege*, 20 Beav. at p. 511.

directing and sanctioning the general system and principle that ought to govern charities of those descriptions. But there are other cases where there is no question as to the conduct or management of the charities, but only whether the charity is entitled to a particular legacy or not. In those cases the Attorney-General is rather in the nature of a trustee for those charities, and the Court prefers having before it the charities beneficially interested, for the purpose of putting their interests before the Court in the light which they consider most favourable to them. In those cases I think it preferable that the charity itself should appear rather than the Attorney-General should represent it."

Accordingly, where the bequest is to the treasurer or other officer of an established charitable institution as part of its general funds, the Attorney-General need not be a party (*o*).

But where the legacy is to be held upon trusts differing from those on which the general funds of the institution are held, the Attorney-General is a necessary party (*p*).

Nor is the presence of the Attorney-General necessary where annual sums are given to be distributed in charity by specified trustees (*q*), or where the fund, although a capital sum, is made immediately distributable (*r*).

Where a bill was filed for an account, the Attorney-General was held not to be a necessary party, merely because a legacy happened to be given to charity (*s*).

Nor is the Attorney-General a necessary party to an action by third persons against charity trustees for specific performance of an agreement (*t*).

But where it is desired to have a charitable gift declared invalid, the presence of the Attorney-General to represent the charity is required (*u*).

By the Charitable Trusts Act, 1869, s. 13 (*x*), the majority of the trustees of a charity, if authorized by the Board of Charity Commissioners, may institute and maintain proceedings as if they were the sole trustees of the charity: and by the same section it is provided that proceedings instituted by the trustees or the majority of the trustees, under the authority of the Commissioners, shall not

(*o*) *Wellbeloved v. Jones*, 1 S. & S. 40.

(*p*) *Ibid.*; *Corporation of the Sons of the Clergy v. Moss*, 9 Sim. 610. But see *Monill v. Lawson*, Vin. Abr. tit. Charit. Uses, H. pl. 11.

(*q*) *Waldo v. Cayley*, 16 Ves. 206; *McColl v. Atherton*, 12 Jur. 1042; and see *Re Randell*, *Randell v. Dixon*, 38 Ch. D. 213; and *ante*, pp. 126, 127. But see

Horda v. Earl of Suffolk, 2 My. & K. 59.

(*r*) *Re Barnett*, 29 L. J. Ch. 871. But see *Re Lea*, *Lea v. Cooke*, 34 Ch. D. 528.

(*s*) *Chitty v. Parker*, 4 Bro. C. C. 38.

(*t*) *Att.-Gen. v. Warren*, 2 Swanst. 291, 311.

(*u*) *Kirkbank v. Hudson*, 7 Price, 212; *Cook v. Duckenfield*, 2 Atk. 563.

(*x*) *Post*.

abate on the death or removal from office of a trustee or the addition of a new trustee (*y*).

Persons
beneficially
interested.

Persons (not being the general objects of the charity) having a beneficial or possible beneficial interest in the subject-matter of the action must be parties.

Thus the heir-at-law must be a party, where the question is whether there is a resulting trust in his favour (*z*), or whether or not he is entitled to the increased rent of charity estates (*a*).

Schoolmaster.

Similarly the master of a school was held a necessary party to an action to have surplus funds applied for his benefit (*b*).

Action to
establish rent-
charge.

As a rule, all the persons whose estates are liable must be parties to an action to establish a right to a rentcharge (*c*). An exception is, however, established in the case of charities. In these cases the Court determines the question whether the rentcharge is issuing out of the land of the persons actually before the Court, although the other terre-tenants are not parties, an inquiry being directed as to the other persons alleged to be liable (*d*).

Lessee.

In an action to set aside a lease of a charity estate, the lessee or his representative, as well as any assignees or under-lessees of any part of the property, should be made parties (*e*).

Visitor.

Where a private founder of a charity subject to visitation has appointed no visitor, his heir-at-law, being in contemplation of law the visitor of the charity, is a necessary party to an action for the execution of the trusts (*f*).

The Court of Chancery, however, in a case of this kind, refused to dismiss an information because of the absence of the heir-at-law, but directed an inquiry to ascertain who he was (*g*).

Persons
having con-
tingent
interest.

Where an information was filed for the establishment of certain charities, consisting of estates given for the endowment of a school, and of others given for the foundation of scholarships in a college for boys to be nominated by the master of the school, it was held to be defective for want of parties, because the Archbishop of York, who had the appointment of the schoolmaster in default of his being

(*y*) See also R. S. C. 1883, Ord. XVII. r. 1.

(*z*) *Att.-Gen. v. Green*, 2 Bro. C. C. 492.

(*a*) *Att.-Gen. v. Haberdashers' Co.*, 4 Bro. C. C. at p. 106. And see *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. at p. 55.

(*b*) *Att.-Gen. v. Smart*, 1 Ves. Sen. 72.

(*c*) *Att.-Gen. v. Jackson*, 11 Ves. 365, 367.

(*d*) *Ibid.* at pp. 367, 372; *Att.-Gen. v. Naylor*, 1 H. & M. 809. And see

Att.-Gen. v. Shelly, 1 Salk. 163; *Att.-Gen. v. Wyburgh*, 1 P. Wms. 599; *Cooke v. Smee*, 2 Bro. P. C. 184.

(*e*) *Att.-Gen. v. Backhouse*, 17 Ves. at p. 285. See also *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. at pp. 73, 74; *Att.-Gen. v. Greenhill*, 33 L. J. Ch. 208.

(*f*) *Att.-Gen. v. Gaunt*, 3 Swanst. 148, n.

(*g*) *Ibid.* Under the present practice no cause or matter can be defeated by reason of the misjoinder or non-joinder of parties: R. S. C. 1883, Ord. XVI. r. 11.

appointed within two months by the master and fellows of the college, was not a party (*h*).

Where a testatrix had given a legacy in trust for the minister of a chapel, but directed that upon a specified contingency it should go to the trustees of a college, and the income had been paid during many years to the minister of the chapel, it was held that the charity for the chapel might be established upon a bill and information to which the trustees of the college were not parties (*i*).

Persons who have no interest, as, for instance, the original subscribers to a charitable fund, do not require to be represented (*k*).

Persons having no interest.
Agent of trustees not proper party

An agent employed by the trustees of a charity to manage its affairs, who receives the income, and has the title deeds in his possession, is not a proper party to an action for an account and scheme (*l*).

Where a fund had been raised by voluntary subscriptions for the alteration and improvement of a church, and seventeen persons had constituted themselves into a committee for the purpose of receiving the subscriptions, and five of the members commenced an action on behalf of themselves and the other members against a former member for an account of money received and paid by him during his membership, it was held that as the members of the committee were mere agents for the subscribers some of the agents could not maintain an action against others (*m*).

Action by some agents against others.

Under the old practice, as a corporation did not answer on oath but under their common seal, and could not consequently be indicted for perjury, the secretary or other officer of the corporation might be made a party for the purpose of giving discovery (*n*).

Discovery from corporation.

Under the present practice (*o*), where a corporation is a party the opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of the corporation. It is improper, therefore, now to join an officer of a corporation as defendant for the purpose of giving discovery, and if he is made a defendant his name will be struck out (*p*).

(*h*) *Att.-Gen. v. St. John's College*, 7 Sim. 241.

(*i*) *Att.-Gen. v. Goddard, T. & R.* 348.

(*k*) *Att.-Gen. v. Munro*, 2 De G. & Sm. 122, 161, 162.

(*l*) *Att.-Gen. v. Earl of Chesterfield*, 18 Beav. 596. The case would of course be different if a stranger had charity

property in his possession and declined to deliver it up.

(*m*) *Strickland v. Weldon*, 28 Ch. D. 426.

(*n*) *Dummer v. Corporation of Chippenham*, 14 Ves. 245. See *Wilson v. Church*, 9 Ch. D. at p. 555.

(*o*) R. S. C. 1883, Ord. XXXI. r. 5.

(*p*) *Wilson v. Church*, 9 Ch. D. 552.

SECTION II.

PETITION AND SUMMONS.

Romilly's Act.

Jurisdiction
on petition.

The jurisdiction of the Court of Chancery, and now of the Chancery Division, to deal with matters relating to charities on petition, is founded upon Sir Samuel Romilly's Act (*r*). That was the first enactment by which provision was made for a more summary mode of procedure than that by information. The jurisdiction has been extended in certain cases by subsequent statutes, but petitions under such Acts usually require to be entitled also in Romilly's Act (*s*).

Romilly's Act,
52 Geo. III.
c. 101.
Preamble.

Romilly's Act was passed for the purpose, as is stated in the preamble, of providing "a more summary remedy in cases of breaches of trusts created for charitable purposes, as well as for the just and upright administration of the same."

Sect. 1.

Sect. 1 provides that "in every case of a breach of any trust or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a Court of Equity shall be deemed necessary for the administration of any trust for charitable purposes, it shall be lawful for any two or more persons to present a petition to the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal, or Master of the Rolls for the time being (*t*), or to the Court of Exchequer (*u*), stating such complaint and praying such relief as the nature of the case may require; and it shall be lawful for the Lord Chancellor, Lord Keeper, and Commissioners for the custody of the Great Seal, and for the Master of the Rolls and the Court of Exchequer, and they are hereby required, to hear such petition in a summary way, and upon affidavits or such other evidence as shall be produced upon such hearing to determine the same, and to make such order therein and with respect to the costs of such applications as to him or them shall seem just" (*x*).

Sect. 2.

Sect. 2 provides "that every petition so to be preferred as aforesaid shall be signed by the persons preferring the same, in the presence of and shall be attested by the solicitor or attorney con-

(*r*) 52 Geo. III. c. 101.

(*s*) See *post*, p. 335.

(*t*) The jurisdiction is now vested in the Chancery Division of the High Court of Justice: Jud. Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 34, 76.

(*u*) The Equity jurisdiction of the Court of Exchequer is abolished.

(*x*) This section contained a provision with regard to appeals to the House of Lords which was repealed by the Stat. Law Rev. Act, 1881.

cerned for such petitioners, and every such petition shall be submitted to and be allowed by his Majesty's Attorney or Solicitor-General, and such allowance shall be certified by him before any such petition shall be presented."

Sect. 3 provides "that neither the petitions, nor any proceedings upon the same or relative thereto, nor the copies of any such petitions or proceedings, shall be subject or liable to the payment of any stamp duty whatever." Sect. 3.

The operation of Romilly's Act is confined to cases arising between the trustees of a charity and their *cestuis que trust*, and even in cases within the Act the Court has a discretion to determine whether the Act can be applied with advantage to the charity or not (*y*). Operation.

In *Att.-Gen. v. Bishop of Worcester* (*z*), Turner, V.-C., made the following observations: "The terms of the Act are most general. It creates the summary jurisdiction in all cases of breach of trust, or supposed breach of trust, and in all cases where the order or direction of the Court shall be deemed necessary for the administration of any trust for charitable purposes; but the decisions, I think, have settled that it does not apply between the trustees and strangers, that it applies only between the trustees and the objects of the trust; and that it is in the discretion of the Court to what extent it ought as between them to be applied. The cases do not, I think, enable any fixed rule to be laid down by which the Court can be governed in the exercise of that discretion. Lord Cottenham, in *The Tiverton School Case* (*a*), is reported to have said that the Act ought not to be applied in cases where the Court sees that the jurisdiction given by it cannot be exercised with justice to any parties, or with benefit to the charity; and it appears that he considered that case not to be proper for the exercise of the jurisdiction, as it involved extensive and fundamental questions as to the principles on which the charity was to be administered (*b*). But these rules still leave it to be considered by the Court in each case whether the Act can be applied with justice and benefit; and what are the extensive and fundamental questions of principle which ought to exclude its application. Perhaps the rule might

(*y*) *Re Manchester New College*, 16 Beav. 610, 617; and see *Re Lawford Charity*, 2 Mer. 453; *Ex parte Rees*, 3 V. & B. 10; *Re Dean Clarke's Charity*, 8 Sim. 34; *Att.-Gen. v. Earl of Devon*, 15 Sim. at p. 259. The application of the Act was very much cut down by early decisions. For an example of the hostility with which it was received by

contemporary judges, see the observations of Lord Redesdale in *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. at p. 49.

(*z*) 9 Hare, at p. 357.

(*a*) *Att.-Gen. v. Earl of Devon*, 15 Sim. at p. 259.

(*b*) *Ibid.* at p. 262.

well be laid down that the Act at all events may safely be resorted to in all cases where the objects of the charity have no distinct interests, and where, therefore, the Attorney-General properly represents them all; and in all cases where, although there may be distinct interests, no substantial question of principle can arise between the several objects" (c).

Where
inapplicable.

The Act has been held not to apply to cases where there are constructive trusts (d), or where the circumstances are complicated (e), or where it is doubtful in whom the legal estate is vested (f), or where there are adverse claims or disputes as to who are the objects of the charity (g), or whether certain persons called governors or trustees have a certain authority (h), or where persons put in adverse claims to the right to administer the charity property (i), or where there are adverse claims to land (k).

Nor can the Court determine under this Act the validity of an appointment of trustees (l), or whether trustees have power to alter the regulations of a school (m). Nor can it add to the number of trustees limited by the foundation (n), or transfer the funds of a dispensary to a hospital and amalgamate the two institutions (o), or set aside a lease of charity property (p). And there is no power under the Act to repair a previous misapplication of trust funds (q), or direct accounts of estates of persons who have received the rents of charity estates (r).

Where a petition was presented by trustees appointed in pursuance of the Municipal Corporations Act, 1835 (s), asking to have their powers and duties declared and proper directions given for the management of the charity, it was held that there was no jurisdiction (t).

Where
applicable.

The Court has, however, adjudicated on petition under this Act between the conflicting claims of different charities where the

(c) See also per Romilly, M. R., in *Re Manchester New Coll.*, 16 Beav. at p. 617.

(d) *Re Norris' Charity*, G. Coop. 295; *Re Lawford Charity*, 2 Mer. 453.

(e) *Corporation of Ludlow v. Greenhouse*, 1 Bl. N. S. 17; *Re Suir, &c. School*, 3 J. & Lat. 171.

(f) *Re Phillipott's Charity*, 8 Sim. 381; *Re Olney Charities*, 11 Jur. 420.

(g) *Re Dean Clarke's Charity*, 8 Sim. 34; *Re Bedford Charity*, 5 Sim. 578; *Re Magdalen Land Charity*, 9 Hare, 624.

(h) *Att.-Gen. v. Corporation of Bristol*, 14 Sim. 648.

(i) *Re West Retford Church Lands*, 10 Sim. 101, 108.

(k) *Ex parte Rees*, 3 V. & B. 10; *Re*

Norris' Charity, G. Coop. 295.

(l) *Re Phillipott's Charity*, 8 Sim. 381.

(m) *Att.-Gen. v. East Retford Grammar School*, 17 L. J. Ch. 450.

(n) *Re Storey's Almshouses*, 9 L. J. Ch. 93.

(o) *Re Reading Dispensary*, 10 Sim. 118.

(p) *Re Lawford Charity*, 2 Mer. 453; *Re Norris' Charity*, *supra*.

(q) *Re Hall's Charity*, 14 Beav. 115; and see cases collected *ibid.* 120, n.

(r) *Re St. Wenn's Charity*, 2 S. & S. 66.

(s) 5 & 6 Will. IV. c. 76. See *ante*, pp. 197 *et seq.*

(t) *Re Newark Charities*, 6 L. J. Ch. 215.

question depended simply upon the construction of a particular instrument (*u*).

There is also jurisdiction to give directions for the sale (*x*), or exchange (*y*), of charity property if obviously beneficial; to consider a scheme for the management of a grammar school (*z*), or of a charity estate (*a*); to alter a scheme and decide as to the site of a charity (*b*), or to direct the application of the funds *cy-près* (*c*), and to ascertain whether an Act of Parliament should be applied for to regulate the charity (*d*).

The Court has also under the Act power to appoint new trustees (*e*), to reinstate a schoolmaster if improperly dismissed (*f*), to regulate the internal management of a school (*g*), to set aside an election to a scholarship (*h*), or to declare the proportions in which the charitable objects are entitled (*i*).

The Court has, however, a discretion to decline to make an order upon a petition under the Act, and to require the parties to proceed by action (*k*). Jurisdiction discretionary.

The petition, unless presented by the Attorney-General acting *ex officio*, must be presented by two or more persons (*l*), and a corporation is not a person within the meaning of the Act (*m*). The petitioners must have a direct interest in the charity (*n*), and must prove that they possess such interest (*o*). A petition cannot be presented by a governing body which is not duly constituted (*p*). Who may be petitioners.

(*u*) *Re Parish of Upton Warren*, 1 My. & K. 410. See, however, *Re Dean Clarke's Charity*, 8 Sim. at p. 42.

(*x*) *Re Parke's Charity*, 12 Sim. 329; *Re Overseers of Ecclesall*, 16 Beav. 297; *Cullen v. O'Meara*, Ir. R. 1 C. L. 640; *Re Ashton Charity*, 22 Beav. 288; *Re Congregational Church, Smethwick*, W. N. 1866, 196; *contra*, *Re Lydford's Charity*, 16 Beav. 297, n.; *Re Swir Island, &c. School*, 3 J. & Lat. 171; and see *ante*, p. 250.

(*y*) *Mildmay v. Lord Methuen*, cited 14 Beav. 121, n., per Lord Cranworth; *Re Newton's Charity*, 12 Jur. 1011.

(*z*) *Re Rugby School*, 1 Beav. 457; *Re Royston Free Grammar School*, 2 Beav. 228.

(*a*) *Ex parte Berkhamstead Free School*, 2 V. & B. 134; *Re Chertsey Market*, 6 Price, 261; *Re Shrewsbury Grammar School*, 1 Mac. & G. 324.

(*b*) *Re Manchester New Coll.*, 16 Beav. 610.

(*c*) *Re Lady Belvedere's Charity*, 2 Ir. Eq. R. 354.

(*d*) *Re Shrewsbury Grammar School*, *supra*.

(*e*) *Bignold v. Springfield*, 7 Cl. & F. 71; and see *Re Peyton's Hospital*, 8 Beav. 70.

(*f*) *Re Phillips' Charity*, 9 Jur. 959; *Re Fremington School*, 10 Jur. 512; but see *Att.-Gen. v. East Retford Grammar School*, 17 L. J. Ch. 460; *Re Bedford Charity*, 5 Sim. 578; *Att.-Gen. v. Corporation of Bristol*, 14 Sim. 648.

(*g*) *Re Rugby School*, 1 Beav. 457.

(*h*) *Re Nettle's Charity*, L. R. 14 Eq. 434.

(*i*) *Re Hall's Charity*, 14 Beav. 115.

(*k*) Per Lord Cottenham, in *Att.-Gen. v. Earl of Devon*, 15 Sim. at pp. 259, 261; *Ex parte Rees*, 3 V. & B. 10; and see *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. 17, 66.

(*l*) Sect. 1, *ante*, p. 328; *Re Garstang, &c. School*, 7 L. J. (O. S.) Ch. 169.

(*m*) *Re L. B. & S. C. Ry. Co.*, 18 Beav. 608.

(*n*) *Re Bedford Charity*, 2 Swanst. at p. 518.

(*o*) *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. at p. 91.

(*p*) *Hamilton v. Spottiswood*, 15 W. R. 118.

Allowance of
Att.-Gen.

Before a petition can be presented it must be submitted to and allowed by the Attorney or Solicitor-General, and the allowance must be certified by him (*g*). It appears that the Solicitor-General can only act during the vacancy of the office of Attorney-General (*r*).

An order made upon a petition not signed by the Attorney-General is a nullity (*s*).

The Court has, however, been in the habit of receiving petitions without the allowance of the Attorney-General upon matters arising out of or having reference to what the Court has before done upon a petition properly signed by him (*t*).

Petition, how
to be signed,
attested, &c.

Before the allowance of the Attorney-General can be obtained the petition must be signed by the petitioners, in the presence of their solicitor, and their signatures attested by him. A certificate should also be written on the petition and signed by the counsel who prepared it, to the effect that in his opinion the petition is one proper to be presented under the Act. The solicitor for the petitioners must also certify on the petition that the petitioners are able to answer the costs of the application. Upon the petition so signed and certified being left with the Attorney-General's clerk, he will obtain the Attorney-General's signature thereto in testimony of his approbation (*u*).

Presentation
of petition.

The petition is addressed to the High Court of Justice and presented in the usual way (*v*); and the sanction of the Charity Commissioners is usually required (*x*).

Non-com-
pliance with
forms.

Where an order had been made upon a petition which had been irregularly presented and did not comply with the provisions of the Act, the petition was ordered to be taken off the file, and the order made upon it was discharged on motion (*y*).

Att.-Gen.
may apply
under Ro-
milly's Act.

By the Charitable Trusts Act, 1853 (*z*), the Attorney-General, acting *ex officio*, is empowered to present petitions, under 52 Geo. III. c. 101, or under any Act authorizing an application by petition, according to the provisions of the said Act.

Service of
petition.

As a rule, the petition should be served upon all persons whose interests will be affected by the order sought to be obtained (*a*);

(*g*) Sect. 2, *ante*, pp. 328, 329.

(*r*) *Re Lawford Charity*, 2 Mer. at p. 456; *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. at p. 65.

(*s*) *Att.-Gen. v. Green*, 1 J. & W. at p. 305.

(*t*) *Att.-Gen. v. Earl of Devon*, 15 Sim. at p. 262; *Re Godmanchester Grammar School*, 15 Jur. 833.

(*u*) Dan. C. P. 6th ed. p. 2044.

(*v*) *Ibid.* p. 2045.

(*x*) As to when the sanction of the Charity Commissioners is required, see sect. 17 of Charit. Trusts Act, 1853, and notes thereto, *post*.

(*y*) *Re Dovenby Hospital*, 1 My. & C. 279.

(*z*) Sect. 43, *post*.

(*a*) Dan. C. P. 6th ed. p. 2045.

and it is an objection to the petition that there is no respondent (b).

As there is no jurisdiction under the Act to make a parish responsible for arrears of charity revenues applied to parochial purposes, the parish officers should not be made respondents for that purpose (c). Parish officers.

Although a petition under Romilly's Act for the appointment of new trustees requires the fiat of the Attorney-General, yet it need not be served upon him. If anything should occur to render his presence desirable, the Court will direct him to be served (d). Service on Att.-Gen.

A petition praying for the removal of charity trustees should be served upon the trustees (e); and an application for the appointment of new trustees must be served on the surviving or continuing trustees (f). Service on trustees.

In a petition for filling up vacancies in the number of trustees appointed in place of a municipal corporation under the Municipal Corporations Act, 1835, the corporation having no interest in the charity should not be respondents (g). Service on municipal corporation.

Parties not served with the petition are strictly not entitled to be heard by counsel. Inasmuch, however, as it is discretionary with the Court to make orders under the Act or not, and inasmuch as such orders ought not to be made in cases where the Court sees that the jurisdiction given by the Act cannot be exercised with justice to the parties or benefit to the charity, there may be cases where counsel for parties not served with the petition might be heard with advantage, for the purpose of enabling the Court to judge in what manner its discretion should be exercised (h). Hearing parties not respondents.

The petitioners and respondents have a right to attend at any proceedings which may, upon the hearing of the petition, be directed to be taken in chambers (i). Proceedings subsequent to petition.

The Attorney-General ought to be a party to all inquiries and other proceedings in chambers, and any proceedings taken in his absence are irregular (j). Att.-Gen.

The Attorney-General is always directed to be served with the summons to proceed on the order (k).

(b) *Ex parte Rees*, 3 V. & B. 10.

(c) *Ex parte Fowler*, 1 J. & W. 70.

(d) *Re Warwick Charities*, 1 Ph. 559. But in *Re Oxford Charity*, cited Set., 4th ed., p. 564, it was said that the Attorney-General ought to be served.

(e) *Ex parte Seagears*, 1 V. & B. 496.

(f) *Re Hereford Charities*, 6 Jur. 289.

(g) *Re Shrewsbury Charities*, 1 Mac. & G. 85.

(h) See per Lord Cottenham in *Att.-*

Gen. v. Earl of Devon, 15 Sim. at p. 259.

(i) Dan. C. P., 6th ed., p. 2045. See R. S. C. 1883, Ord. LV. rr. 40—43.

(j) *Att.-Gen. v. Earl of Stamford*, 1 Ph. 737. See also *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. at p. 65.

(k) *Re Hanson's Trust*, 9 Hare, App. I. p. liv.; Set., 4th ed., pp. 551, 561; Dan. C. P., 6th ed., p. 2045. As to the practice upon summonses to proceed, see R. S. C. 1883, Ord. LV. rr. 32, 33.

Proceedings
abandoned by
petitioners.

Applications
subsequent to
petition.

The Attorney-General or other party served may carry out an order when proceedings are abandoned by the originators (*l*).

Where an order has been obtained under the Act by petition, a subsequent order may be made on motion (*m*).

Thus where an order had been made for payment of a sum of money to a schoolmaster, a short order for payment was made upon motion (*n*).

Alteration of
scheme.

The Court has jurisdiction in an action to alter a scheme previously settled on petition (*o*). Conversely it can upon petition alter a scheme previously settled in an action (*p*).

Information
and petition.

Where an information and a petition under the Act were proceeding together and included the same or part of the same objects, the Court referred it to the Attorney-General to consider which should proceed (*q*).

But where an information had been filed and a petition subsequently presented having the same objects, the Court refused to give relief on the petition as to such of the objects as came within the limits of the petition, and to leave the rest to be disposed of on the information (*r*).

Petitions
under other
Acts.

The summary mode of procedure under Romilly's Act has been extended by various statutes to other cases relating to charities.

Grammar
Schools Act.

The Grammar Schools Act (*s*), which confers powers upon Courts of Equity to extend the system of education and the right of admission into grammar schools, and to establish schemes for the application of their revenues, after reciting that it was expedient to facilitate applications to the Court of Chancery under the Act, enacts, "that all applications may be heard and determined and all powers given by this Act to the Court of Chancery may be exercised in cases brought before such Court by petition only, such petitions to be presented, heard, and determined according to the provisions" of 52 Geo. III. c. 101.

It has been doubted whether there would be jurisdiction under the Grammar Schools Act to insert in a scheme for the management of a grammar school a provision for the appointment of a board of managers to act with the governors in administering the property and controlling the management of the school (*t*).

(*l*) *Re Bedford Charity*, 29 L. T. 5.

(*m*) *Re Sleweringe's Charity*, 3 Mer. 707; *Re Chipping Sodbury School*, 5 Sim. 410.

(*n*) *Re Chipping Sodbury School*, *supra*.

(*o*) *Att.-Gen. v. Earl of Stamford*, 1 Ph. 737.

(*p*) *Att.-Gen. v. Bishop of Worcester*, 9

Hare, 328.

(*q*) *Att.-Gen. v. Green*, 1 J. & W. 303.

(*r*) *Re Lawford Charity*, 2 Mer. 453.

(*s*) 3 & 4 Vict. c. 77, s. 21, printed in App. I., *post*.

(*t*) *Re Chelmsford Grammar School*, 1 K. & J. 543.

Petitions under the Grammar Schools Act should be served on the patron and head master of the school (*u*).

The procedure under Romilly's Act was also adopted in 8 & 9 Vict. c. 70, which provides for the apportionment of charities on the formation of new districts for churches (*x*). 8 & 9 Vict. c. 70.

Sometimes petitions may be presented under Acts regulating particular charities (*y*). Special Acts.

Where a private Act authorized "any person or persons whomsoever" to present a petition relating to a charity, it was held to mean only persons who had an interest in the funds (*z*). Petitioners must have interest in charity.

Where the jurisdiction given under a particular Act and that given by Romilly's Act differ, a petition cannot proceed upon an allegation that the petitioners are entitled to relief, either under the Act relative to the particular charity, or under the general Act, or under both those Acts. This was attempted in the *Bedford Charity Case* (*a*), but Lord Eldon said: "The petitioners must choose on which Act they will proceed, and for this reason: under the particular Act the judgment of the Lord Chancellor is final; under Sir Samuel Romilly's Act it is subject to appeal: the Court, therefore, cannot proceed on both Acts; the judgment cannot be both final and not final. I cannot give judgment in two jurisdictions." Petition cannot be presented in two jurisdictions.

Petitions presented under the Grammar Schools Act, or under 8 & 9 Vict. c. 70, should be entitled in the matter of 52 Geo. III. c. 101, as well as in the matter of the Grammar Schools Act, or 8 & 9 Vict. c. 70 (*b*). Petitions how entitled.

So also it was held that petitions for filling up vacancies in the number of trustees of charities formerly vested in Municipal Corporations required to be entitled in 52 Geo. III. c. 101, as well as in the Municipal Corporations Act of 1835 (*c*). In some cases they have also been entitled in the Trustee Act, 1850 (*d*). Petitions for new trustees in place of municipal corporation.

A petition for the appointment of new trustees under the Trustee Act, 1850, similarly requires to be entitled under 52 Geo. III. c. 101, as well as under the Trustee Act, 1850 (*e*), unless it is Trustee Act, 1850.

(*u*) *Re Marlborough Grammar School*, 7 Jur. 1047.

(*z*) See *ante*, pp. 173 *et seq.*

(*y*) See Shelf. Mortm. 508, and stat. 39 Geo. III., as to the Free Grammar School of Wotton-under-Edge, stated *ibid.* p. 511.

(*a*) *Re Bedford Charity*, 2 Swanst. at p. 525.

(*b*) 2 Swanst. 470, 518.

(*c*) *Re West Ham Charities*, 2 De G. & Sm. at p. 222.

(*d*) *Re Warwick Charities*, 1 Ph. 559; *Att.-Gen. v. Mayor of Exeter*, 2 De G. M. & G. 507; *Bignold v. Springfield*, 7

Cl. & F. 71. The Municip. Corp. Act, 1835 (5 & 6 Will. IV. c. 76), was repealed by the Municip. Corp. Act, 1882 (45 & 46 Vict. c. 50), s. 133 of which takes the place of s. 71 of the old Act, which was the section which related to the appointment of charitable trustees: see *ante*, p. 198.

(*d*) *Re Gloucester Charities*, 10 Hare, App. iii; *Re Northampton Charities*, 3 De G. M. & G. 179.

(*e*) *Re Rolle's Charity*, 3 De G. M. & G. 153; 10 Hare, App. xxxix; *Re Parkeg Ironworks Wesleyan Chapel*, *ibid.* xxxvii; *Re Berton Charity Land*, *ibid.* xxxviii.

presented in a pending action for the regulation of the charity (even though all proceedings have been stayed), when it is sufficient to entitle it in the action and in the Trustee Act, 1850 (*f*).

Lands Clauses Act.

It has been held that a petition for the investment of funds in Court under the Lands Clauses Consolidation Act, 1845 (*g*), should be entitled in Romilly's Act (*h*).

Petition under Charit. Trusts Act, 1853, s. 28.

A petition directed by the judge in chambers, under sect. 28 of the Charitable Trusts Act, 1853 (*i*), for appointing new trustees, should be entitled in the matter of the Charitable Trusts Act, 1853, and in the matter of the Trustee Act, 1850, but need not be entitled in Romilly's Act (*k*).

Fiat of Att.-Gen.

Petitions entitled in Romilly's Act, although entitled also in some other Act, must receive the fiat of the Attorney-General, and be prepared and presented in compliance with the requirements of Romilly's Act (*l*).

When the petition is presented in an action the fiat of the Attorney-General is not necessary, it being a matter within the discretion of the Court whether it will be required or not (*m*).

Sanction of Charity Commissioners.

Petitions relating to charities within the jurisdiction of the Charity Commissioners (*n*), unless presented in "a suit or matter actually pending," require the sanction of the Charity Commissioners (*o*).

A petition for the appointment of new trustees presented under a scheme settled upon a previous petition is not an application in "a suit or matter actually pending," and therefore requires the certificate of the Commissioners (*o*). But such a petition presented in a pending action does not (*p*).

Local notice of appointment of trustees.

In *Re Gloucester Charities* (*q*), Wood, V.-C., said that formerly applications were made for the appointment of new trustees, and

In some cases this has not been required: *Re Nightingale's Charity*, 3 Hare, 336; *Re Belke's Charity*, 13 Jur. 317, both cases of petition under 11 Geo. IV. & 1 Will. IV. c. 60. See also *Re Lincoln Primitive Methodist Chapel*, 1 Jur. N. S. 1011.

(*f*) *Att.-Gen. v. Cooper*, 8 Jur. N. S. 50.

(*g*) 8 & 9 Vict. c. 18.

(*h*) *Re L. B. & S. C. Ry. Co.*, 18 Beav. 608.

(*i*) *Post*.

(*k*) *Re Lincoln Primitive Methodist Chapel*, 1 Jur. N. S. 1011. See further n. (*a*) to sect. 28 of the Charit. Trusts Act, 1853, *post*, and *Re Davenport's Charity*, 4 De G. M. & G. 839, there cited.

(*l*) *Re L. B. & S. C. Ry. Co.*, 18 Beav. 608. See *Re Rolle's Charity*, 3 De G. M. & G. 153; *Re Warwick Charities*, 1

Ph. 559.

(*m*) *Att.-Gen. v. Cooper*, *supra*.

(*n*) See the definition of charity in sect. 66 of the Charit. Trusts Act, 1853, and n. (*c*) to that section, *post*; and as to what charities are exempted from the application of the Acts, see sect. 62 of the Charit. Trusts Act, 1853, and notes thereto, *post*. See *Re Jarvis' Charity*, 1 Dr. & Sm. 97; *Re Duncan*, L. R. 2 Ch. 356; and note (*a*) to sect. 17 of the Charit. Trusts Act, 1853, *post*.

(*o*) *Re Jarvis' Charity*, *supra*. See also *Re Bingley Free School*, 2 Dr. 283; *Re Ford's Charity*, 3 *ibid.* 324.

(*p*) *Att.-Gen. v. Cooper*, *supra*.

(*q*) 10 Hare, App. iii. See also *Re Lancaster Charities*, 7 Jur. N. S. 96. Cf. the practice of the Charity Commissioners, sect. 6 of the Charit. Trusts Act, 1860, and note (*c*) thereto, *post*.

the order for the appointment was made, without any communication with the persons locally interested in the charities. This often occasioned great dissatisfaction, and sometimes led to litigation for the purpose of removing persons who were objected to, and had been so appointed. The Attorney-General, to obviate this inconvenience, had adopted the rule of requiring notices of application for the appointment of new trustees of municipal charities to be published and made known in the town, in order that other persons might have the opportunity of giving any information or suggestion with regard to the propriety of the proposed appointments.

Where the fiat of the Attorney-General approving of certain persons as trustees of a charity is issued with full knowledge of all matters in dispute before him, and no objection is taken to its issue, the Court appoints the persons approved by him (*r*).

Fiat of
Att.-Gen.

Persons furnishing information or suggestions must do so gratuitously, and will not be allowed costs out of the charity funds (*s*).

Information
and sugges-
tions gra-
tuitous.

The jurisdiction at chambers is founded on sect. 28 of the Charitable Trusts Act, 1853 (*t*).

Jurisdiction
at Chambers.

By that section, where the appointment or removal of any trustee, or any other relief, order, or direction relating to any charity, of which the gross annual income for the time being exceeds 30*l*., is considered desirable, and such appointment, removal, or other relief, order, or direction might have been made or given by the Court of Chancery or the Lord Chancellor, intrusted with the care and commitment of the custody of lunatics, any person authorised by order or certificate of the Board of Charity Commissioners, or the Attorney-General (*u*), may apply to a judge at chambers for such order, direction, or relief as the nature of the case may require; and the judge may proceed upon and dispose of the application in chambers, save where he may think fit otherwise to direct, and has such jurisdiction, and may make such orders and give such directions as might have been exercised, made, or given by the Court of Chancery or the Lord Chancellor intrusted as aforesaid, in a suit regularly instituted or upon petition.

Charit. Trusts
Act, 1853,
s. 28.

The jurisdiction created by the above section is now vested in the Chancery Division of the High Court of Justice (*x*).

Transfer of
jurisdiction
to Chancery
Division.

(*r*) *Re Lancaster Charities*, 7 Jur. N. S. 97.

(*s*) *Re Gloucester Charities*, 10 Hare, App. iii.

(*t*) *Post*.

(*u*) With regard to the persons who may make applications, see Charit.

Trusts Act, 1853, s. 43, *post*. The certificate of the Charity Commissioners is sufficient evidence as to the amount of the income of the charity: Charit. Trusts Act, 1853, s. 44, *post*.

(*x*) Jud. Act, 1873, ss. 34, 39.

Extent of jurisdiction.

The section confers on the judge at chambers the same powers which could previously have been exercised in a suit regularly instituted or on petition (*y*).

Determining existence of charity.

There is jurisdiction under the section to decide the question whether the property to which the summons relates is held upon a charitable trust or not (*z*).

Adverse claims.

The jurisdiction at chambers does not extend to trying titles as between any charity or the trustee thereof and any person claiming adversely to the charity, or to determine any question as to the existence or extent of any charge or trust (*a*).

Orders made in chambers.

The orders which may be made under this section include orders for the appointment and removal of trustees (*b*), vesting orders (*c*), orders vesting charity land in the official trustee of charity lands (*d*), orders for schemes (*e*) for leave to transfer stock to or deposit securities with or for payment of money to the official trustees of charitable funds, and for investment and payment of dividends (*f*).

Mode of procedure.

The application is by originating summons (*g*). The summons should be entitled in the matter of the charity as described in the certificate authorising the application, and also in the matter of the Charitable Trusts Acts and of any other special Acts, such as the Trustee Acts, conferring jurisdiction in the particular case; and it should state the precise object of the application (*h*).

Except where the application is made by the Attorney-General acting *ex officio*, a copy of the certificate of the Charity Commissioners authorising the application, verified by a certificate of the applicant's solicitor (*i*), must be left at the judge's chambers at the time the summons is issued (*k*).

And a written authority from the applicant should be filed by his solicitor at the time of sealing the summons and filing the

(*y*) *Re Davenport's Charity*, 4 De G. M. & G. 839.

(*z*) *Re Norwich Town Close Estate Charity*, 40 Ch. D. 298.

(*a*) Charit. Trusts Act, 1853, s. 41, *post*. See *Re Norwich Town Close Estate Charity*, *supra*, at pp. 309, 310.

(*b*) See also R. S. C. 1883, Ord. LV. r. 13.

(*c*) *Re Davenport's Charity*, *supra*; *Re Lincoln Primitive Methodist Chapel*, 1 Jur. N. S. 1011. And see *ante*, p. 185.

(*d*) *Re Titchmarsh*, Set. 4th ed. p. 569; *Re Westfield's Charity*, *ibid.*; *Re Beckenham Charity*, *ibid.*; *Re Saffron Walden Charity*, *ibid.*

(*e*) *Re Sion Hospital*, Set. 4th ed. p. 569; *Re Charitable Gifts for Prisoners*,

L. R. 8 Ch. 199. And see n. (*a*) to sect. 28 of the Charit. Trusts Act, 1853, *post*.

(*f*) Set. 4th ed. pp. 569–571; *Re Wharton's Charities*, *ibid.* p. 570; *Re Reigate Charities*, *ibid.*; *Re Orsley's Charity*, *ibid.* p. 571; *Re Cranbourn Schools*, *ibid.* See also n. (*a*) to sect. 28 of Charit. Trusts Act, 1853, *post*.

(*g*) R. S. C. 1883, Ord. LV. r. 13; Dan. Forms, 4th ed. p. 880, where forms of summonses are given. For forms of orders, see Set. 4th ed. pp. 550 and 568 *seq.*

(*h*) Dan. C. P. 6th ed. 2049.

(*i*) For form of this certificate, see Dan. Forms, 4th ed. p. 880.

(*k*) Dan. C. P. 6th ed. 2049.

duplicate. The solicitor should also file a certificate by himself that the applicant is able to pay costs (*l*).

The summons, when not taken out by the Attorney-General, Service. must be served upon the solicitors of the Attorney-General on his behalf, except where the summons merely asks for the appointment of trustees or a vesting order, or an order for the transfer of stock consequent on a vesting order (*m*); and, as a rule, the summons must be served on all persons whose interests are affected (*n*).

By sect. 42 of the Charitable Trusts Act, 1853 (*o*), notice of an application for the establishment or alteration of a scheme, or the appointment or removal of a trustee, must be given, in writing, in such form and manner as the Charity Commissioners may direct; and if the order is that the notice is to be affixed to the door of a parish or district church, the incumbent and churchwardens must allow the notice to remain so affixed during such period, not less than fifteen days, as the Charity Commissioners may have ordered; and evidence that the notice has been so affixed is *prima facie* evidence that it has remained affixed during the period prescribed. Notice of application.

The judge at chambers may, if he think fit, direct proceedings to be taken by action or petition, and may abstain from further proceedings on the summons (*p*). Judge may direct action or petition.

By the Roman Catholic Charities Act, 1860 (*q*), the jurisdiction at chambers conferred by sect. 28 of the Charitable Trusts Act, 1853 (*r*), is extended to the apportionment of Roman Catholic charities partly applicable to superstitious uses, and the application of such last-mentioned part to lawful charitable trusts. Apportionment of Roman Catholic charities.

During the continuance of the power of making schemes under the Endowed Schools Acts, no Court or judge can, with respect to an endowed school or educational endowment which can be dealt with by a scheme under those Acts, make a scheme or appoint new trustees without the consent of the Committee of Council on Education (*s*). Endowed schools, &c.

In the case of charities established, or administered, or applicable to or for objects or purposes within the City of London, orders, which in the case of other charities could only have been made if the gross annual income of the charity exceeded 30%, can be made City of London charities.

(*l*) Dan. C. P. 6th ed. 2049, 2050, where it is stated that the latter practice is not now adhered to.

(*m*) *Ibid.* 2050.

(*n*) *Ibid.*

(*o*) *Post.*

(*p*) Charit. Trusts Act, 1853, s. 28, *post.*

(*q*) 23 & 24 Vict. c. 134, s. 1, *post.*

(*r*) See *ante*, p. 337.

(*s*) End. Schools Act, 1874, s. 6, *post.*

whether the gross annual income does or does not exceed that amount (*t*).

But during the continuance of the power of making schemes under the City of London Parochial Charities Act, 1883, no Court or judge can, with respect to any charity property or endowment which can be dealt with by a scheme under that Act, make a scheme or appoint new trustees without the consent of the Charity Commissioners (*u*).

Appeals. With regard to appeals, it is provided by R. S. C. 1883, Ord. LV. r. 14, that—

“No order made under the Act in the last-preceding rule mentioned (*x*) by the judge in chambers shall be subject to appeal where the gross income of the charity has not been declared by the Charity Commissioners for England and Wales to exceed 100*l.*, unless the judge by whom such order may have been made shall certify that such appeal ought to be permitted, either absolutely or on such terms as the judge may think fit to impose” (*y*).

The right of appeal extends to cases where the aggregate income of several charities dealt with by the order exceeds 100*l.*, although the income of each individual charity is less than that amount (*z*).

An appeal cannot be presented by a person who did not appear in the Court below, even though he is an interested party (*a*).

Fees. Provision with regard to fees is made by R. S. C. 1883, Ord. LXV. rr. 24 and 25, which are as follows:—

Rule 24. “The fees payable on proceedings before a judge in chambers under the Charitable Trusts Act, 1853, sect. 28, shall be the same as the fees payable according to the rules relating to costs in respect of other proceedings commenced by summons, and shall also in all other respects be regulated by these rules” (*b*).

Rule 25. “Where the judge directs that any matter commenced by summons under the Act in the last-preceding rule mentioned shall be heard in open Court, the same fees shall be payable and the same costs shall be allowed as would have been payable in respect of any other matter so heard.”

Settlement of Schemes.

Procedure for settling schemes.

Schemes when directed to be settled are usually prepared by the applicants and submitted to the solicitors for the Attorney-

(*t*) Charit. Trusts Act, 1853, s. 30, *post.*

(*u*) Sect. 40, *post.*

(*x*) Charit. Trusts Act, 1853: see s. 28, *post.*

(*y*) See *ibid.*

(*z*) *Re Charitable Gifts for Prisoners*, L. R. 8 Ch. 199.

(*a*) *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. 17.

(*b*) For the tables of fees, see R. S. C. 1883, App. N.

General for approval (c). They are then settled before the judge at chambers, and the Attorney-General is served with a summons to attend (d).

The Attorney-General may always, and in general must, be present at the settlement of a scheme (e). His attendance may, however, sometimes be dispensed with, as where the fund is small (f). Attendance of Att.-Gen.

The attendance of persons interested may be dispensed with, they being represented by the Attorney-General (g). Sometimes they will not be allowed to attend even at their own expense (h). On the other hand, leave may be given to persons not parties to the action to attend, only one set of costs being allowed (i). Attendance of other persons.

If there are any matters requiring to be argued the summons will be adjourned into Court (k). Adjournment into Court.

A fair copy of the scheme as settled by the judge is signed by him and filed in the central office, and office copies of it can be obtained (l). Scheme filed.

The order does not usually set out the scheme, but merely refers to the copy so filed (m).

In a simple case, and where the fund is small, a scheme will sometimes be directed without a reference (n). Scheme directed without reference.

Funds in Court.

Applications for interim and permanent investment of and for payment of dividends on funds in Court under the Lands Clauses Consolidation Act, 1845 (o), are made by summons and not by petition (p). Investment and payment of dividends.

An application for payment out to the master and fellows of a college of money in Court under the Lands Clauses Act, they What is permanent investment.

(c) *Re Wyersdale School*, 10 Hare, App. lxxiv.

(d) *Re Hanson's Trust*, 9 Hare, App. liv.

(e) *Att.-Gen. v. Goldsmiths' Co.*, C. P. Coop. at p. 312; *Re Wyersdale School*, *supra*; *Att.-Gen. v. Earl of Stamford*, 1 Ph. at p. 749; *Re Clergy Society*, 2 K. & J. 615; *Att.-Gen. v. St. Cross Hospital*, 18 Beav. 475; *Re St. Pancras Burial Ground*, L. R. 3 Eq. 173; *Re Taylor, Martin v. Freeman*, 58 L. T. N. S. 538.

(f) *Att.-Gen. v. Haberdashers' Co.*, 2 My. & K. 817.

(g) See *Att.-Gen. v. St. Cross Hospital*, 18 Beav. 475; *Re Sekeford's Charity*, 5 L. T. N. S. 488; *Re Shrewsbury Grammar School*, 1 Mac. & G. at p. 334.

(h) *Att.-Gen. v. St. Cross Hospital*, *supra*.

(i) *Att.-Gen. v. Shore*, 1 My. & C. 394. As to the course to be pursued where a person is not served with the proceedings, and raises objections which were not brought forward when the scheme was being settled, see *Re Loppington Parish*, 8 Hare, 198.

(k) *Re Hanson's Trust*, *supra*.

(l) Dan. C. P. 6th ed., 2046.

(m) *Re Conyers' Free Grammar School*, 10 Hare, App. v.

(n) *Att.-Gen. v. Brandroth*, 1 Y. & C. C. 200. And see *Att.-Gen. v. Earl of Mansfield*, 14 Sim. 601.

(o) 8 & 9 Vict. c. 18.

(p) R. S. C. 1883, Ord. LV. r. 2 (7).

undertaking to apply it in building, was held not to be an application for "permanent investment" within the rule, and to be properly made by petition (*q*).

Investment
as "capital
money."

But applications for the investment or application of such money as "capital money" in pursuance of sect. 32 of the Settled Land Act, 1882, are within the rule, and should be made by summons (*r*).

Petition some-
times pre-
ferable.

Cases, however, may arise in which a petition is preferable to a summons, and the costs of a petition will then not be disallowed. But the applicant's choice of procedure is made at his own risk (*s*).

Where the scheme regulating the charity provided for the vesting of the charity property in the official trustee of charity lands and the official trustees of charitable funds respectively, and the case was a proper one for a petition, it was held that the official trustees were properly made respondents to and served with the petition (*t*).

Sanction of
Charity Com-
missioners.

Applications for investment do not require the sanction of the Charity Commissioners (*u*).

Payment out.

Applications for payment or transfer out of Court are made, if the funds do not exceed 1,000*l.*, by summons, and if they exceed that sum, by petition (*x*).

Affidavit of
title.

An affidavit verifying their title must be made by any persons claiming to be entitled to funds in Court under the Lands Clauses Consolidation Act, 1845 (*y*). This affidavit cannot be dispensed with even where the application is merely for investment and payment of dividends (*z*).

Where, however, the persons entitled were the president and scholars of Magdalen College, Oxford, the affidavit of no title in any other person in the case of an application for investment and payment of dividends was dispensed with; Jessel, M. R., observing that the rule was not intended to apply to large bodies such as the petitioners (*a*).

By whom
made.

The affidavit may be made by the clerk of the charity trustees (*b*) or by one of the petitioning trustees (*c*).

(*q*) *Ex parte Jesus Coll., Cambridge*, 50 L. T. N. S. 583. And see *Re Arnold*, 31 S. J. 560; *Re Earl de Grey's Entailed Estate*, W. N. 1887, 241; *Re Hargreave's Trust*, 58 L. T. N. S. 367.

(*r*) *Re Bethlehem and Bridewell Hospitals*, 30 Ch. D. 541.

(*s*) *Ibid.*

(*t*) *Re Stafford's Charity*, 57 L. T. N. S. 846.

(*u*) See n. (*a*) to sect. 17 of the Charit. Trusts Act, 1853, *post*.

(*x*) R. S. C. 1883, Ord. LV. r. 2 (2).

As to who are entitled to obtain payment out, and as to when the sanction of the Charity Commissioners is required, see *ante*, pp. 281 *et seq.*

(*y*) R. S. C. 1883, Ord. LII. r. 18.

(*z*) *Ex parte Wardens, &c. of St. Mary's College, Winchester*, 14 W. R. 788.

(*a*) *Re President, &c. of Magdalen College, Oxford*, 42 L. T. N. S. 822.

(*b*) *Re Edward the Sixth's Almshouses*, 16 W. R. 841.

(*c*) *Re Vale of Neath Railway Act*, 1863, W. N. 1866, 78.

SECTION III.

COUNTY COURTS.

In the case of charities of which the gross annual income does not exceed 50*l.* (*d*) jurisdiction is, by the Charitable Trusts Act, 1853 (*e*), conferred upon the County Courts, where the appointment or removal of any trustee or any other relief, order or direction whatsoever is desirable, and could formerly have been ordered or given by the Court of Chancery or the Lord Chancellor, to give such relief and make such orders (*f*) and directions as could have been made or given by the Court of Chancery or the Lord Chancellor in a suit regularly instituted or upon petition. The application may be made by any person authorised by the order or certificate of the Charity Commissioners, or it may be made by the Attorney-General (*g*). But no County Court judge may vary any decree, order or direction of the Chancery Division, or make any order inconsistent therewith (*h*). Jurisdiction
of County
Courts.

Where two or more County Courts have concurrent jurisdiction with respect to a charity, no application can be entertained by more than one of them at the same time (*i*), and the Charity Commissioners may order to which of such Courts the application shall be made, and that order is conclusive as to the jurisdiction (*k*). The Charity Commissioners may also direct cases within the jurisdiction of a County Court to be taken before the Chancery Division, or as to any charity within the jurisdiction of the Palatine Court of Lancaster, either before such Court or before the Chancery Division, according to the provisions applicable to a charity the gross annual income of which exceeds 30*l.* (*l*).

No order of a County Court for the appointment or removal of trustees or approval of a scheme is valid unless confirmed by the Commissioners (*m*), and they may, if dissatisfied with the order, remit the case for re-consideration, or transfer the matter to the Chancery Division, or Palatine Court of Lancaster (*n*).

Provisions with regard to enforcing, rescinding, and varying orders of County Courts are contained in sect. 38, and pro-

(*d*) The limit was extended from 30*l.* to 50*l.* by Charit. Trusts Act, 1860, s. 11, *post*. The certificate of the Charity Commissioners is evidence as to the income of the charity: Charit. Trusts Act, 1853, s. 44, *post*.

(*e*) Sect. 32.

(*f*) For forms of orders, see County Court Rules, 1889, forms 342—345.

(*g*) *Ibid.*; and see sects. 17, 42, 43 of the same Act, *post*.

(*h*) Sect. 32.

(*i*) *Ibid.*

(*k*) Sect. 34.

(*l*) Sect. 35.

(*m*) Sect. 36.

(*n*) Sect. 37.

visions with regard to appeals in sects. 39 and 40 (*p*), of the Charitable Trusts Act, 1853. The jurisdiction of the County Courts does not extend to try titles as between any charity or the trustees thereof, and any person claiming adversely to the charity, or to determine any question as to the existence of any charge or trust (*r*).

County Court
Rules, 1889,
Ord. XLVIII.

Jurisdiction
obsolete.

The practice in the County Courts under the Charitable Trusts Act, 1853, is regulated by Order XLVIII. of the County Court Rules, 1889.

The jurisdiction of the County Courts is now, however, practically obsolete.

SECTION IV.

COSTS.

Att.-Gen.
does not pay
costs.

It has been said that the Attorney-General neither receives nor pays costs. The meaning of this is that the Attorney-General neither receives nor pays costs in cases in which, if he were a private individual, he would have been called upon to pay them (*s*).

Receives
costs.

It does not apply to cases in which the Attorney-General, if a private individual, would have received costs (*t*).

Solicitor and
client costs.

In the case of successful proceedings the Attorney-General is allowed costs as between solicitor and client (*u*).

18 & 19 Vict.
c. 90, does not
apply.

The Act 18 & 19 Vict. c. 90, by which provision is made for payment of costs to or by the Crown in case of certain proceedings instituted on its behalf, does not apply to charity cases (*x*).

Charges and
expenses.

The Attorney-General may also be allowed charges and expenses relating to the charity not being costs in the matter, but he must state the matter in respect of which payment of such charges and expenses is desired (*y*).

"The province of the taxing master is to determine whether the costs incurred are properly charged in particular matters which are specified; but it is not his province to determine whether the trustees or the Attorney-General properly embarked in certain

(*p*) *Post*, and see notes thereto. For forms, see App. to County Court Rules, 1889.

(*r*) Sect. 41. See *Christie v. Sandberg*, W. N. 1880, 159.

(*s*) *Corporation of London v. Att.-Gen.*, 1 H. L. C. at p. 471; *Att.-Gen. v. Corporation of London*, 2 Mac. & G. at p. 271.

(*t*) See *Att.-Gen. v. Earl of Ashburn-*

ham, 1 S. & S. at pp. 396, 397.

(*u*) *Moggridge v. Thackwell*, 1 Ves. Jun. at p. 475; 7 Ves. at p. 88; 13 Ves. 416; *Mills v. Farmer*, 19 Ves. at p. 490; *Att.-Gen. v. Stewart*, L. R. 14 Eq. at p. 25.

(*x*) *Att.-Gen. v. Dean and Canons of Windsor*, 8 H. L. C. at p. 459.

(*y*) *Re Duhovich Coll.*, L. R. 15 Eq. 294.

proceedings: that is the province of the Court; and when the Court has determined that they did so properly embark, then the taxing master is to determine whether the costs charged for that purpose are proper" (z).

The Attorney-General is allowed costs, even where his application fails, if it was made with the sanction of the Court (a).

Costs where application fails.

Where in a charity information the relators were allowed their costs of the proceedings, which the Attorney-General had, without an order of the Court, attended separately by his own solicitor, the Attorney-General was not allowed his separate costs (b). But where collusion is suspected between the defendants and the relators, the Attorney-General may receive his costs of appearing separately (c). It seems, however, that he should not so appear without making an application to the Court (d).

Att.-Gen. appearing separately from relators.

In a charity information filed without a relator, the Attorney-General did not appear personally upon the hearing, but two other counsel appeared in support of the information. It was held, however, that the costs of a brief of the Attorney-General ought to be allowed in addition to those of the two counsel in the taxation of costs as between party and party (e).

Att.-Gen. not appearing personally.

Where a defendant who had been ordered to pay the costs of the Attorney-General and trustees became insolvent, the costs were ordered to be paid out of the charity estate (f).

As a rule, "The relator in a charity information, where there is nothing to impeach the propriety of the suit, and no special circumstances to justify a special order, is, upon obtaining a decree for the charity, entitled to have his costs as between solicitor and client, and to be paid the difference between the amount of such costs and the amount of the costs which he may recover from the defendants, out of the charity estate" (g).

Relators: solicitor and client costs.

In special cases, the relator may be entitled also to charges and expenses, but such cases must depend upon their peculiar circumstances (h).

Charges and expenses.

Where a relator after decree incurred expense in obtaining information without the sanction of the master, and the information

(z) *Ibid.* at p. 296, per Romilly, M. R.

(a) *Re Bedford Charity*, 29 L. T. 5.

(b) *Att.-Gen. v. Dove*, T. & R. 328.

(c) *Dan. C. P.* 6th ed. p. 69; *Att.-Gen. v. Wyggeston Hospital*, 2 June, 1855; *Sett.* 4th ed. 556.

(d) *Att.-Gen. v. Dove*, *supra*.

(e) *Att.-Gen. v. Drapers' Co.*, 4 Beav. 305.

(f) *Att.-Gen. v. Lewis*, 8 Beav. 179.

(g) *Per Lord Langdale*, M. R., in

Att.-Gen. v. Kerr, 4 Beav. at p. 303.

See also *Att.-Gen. v. Corporation of Berwick-upon-Tweed*, Taml. 239; *Att.-Gen. v. Drummond*, 3 Dr. & W. at p. 165; *Att.-Gen. v. Carle*, 1 Dick. 113.

(h) *Per Lord Langdale*, M. R., in *Att.-Gen. v. Kerr*, 4 Beav. at p. 303. See *Osborne v. Denne*, 7 Ves. 424; *Att.-Gen. v. Skinners' Co.*, Jac. at p. 630; *Att.-Gen. v. Corporation of Winchester*, 3 L. J. O. S. Ch. 64.

so obtained had proved useful to the charity, although he was refused costs, yet he was allowed the sums *bonâ fide* expended by him (i).

Party and
party costs.

Where an information only succeeded as to part, and was filed without any previous application to the trustees of the charity, and as to the part which succeeded did not substantially promote the benefit of the charity, the relators were only allowed costs as between party and party, and no extra costs out of the charity fund (k).

No costs.

An information asking that certain alienations and exchanges of the trust property might be set aside, and that a scheme might be settled and new trustees appointed, was dismissed with costs so far as it asked to have the alienations set aside; and as to so much of it as was not dismissed, no costs were given to the relators up to the hearing, it appearing that the information had not been filed with a view to the benefit of the charity, and had been conducted with great unnecessary expense (l).

Relief obtain-
able on
petition.

Where the relief obtained on an information might have been obtained on petition under Romilly's Act, the Court gave no costs to the relators up to the hearing (m).

Relators
ordered to
pay costs.

Not only will costs not be allowed the relator, but sometimes when the information is unnecessary, and especially if it contains gross imputations upon the character of others, the Court will order the relators to pay the costs (n). And where a person was unjustifiably made a party to an information, it was dismissed as against him, with costs to be paid by the relators (o). Similarly, where the information appeared to proceed from a private motive of revenge in the relator (p).

Trustees'
costs.

The rules with regard to the costs of charity trustees do not differ from those which apply in the case of private trustees.

Costs,
charges, and
expenses.

As between themselves and other parties to the proceedings trustees are in the same position as any other litigant. But as between themselves and the trust funds they are entitled to all costs, charges, and expenses properly incurred by them in connection with the trusts; such costs are a matter of contract, and are not, like the ordinary costs of an action, within the discretion of

(i) *Att.-Gen. v. Ironmongers' Co.*, 10 Beav. 194.

(k) *Att.-Gen. v. Fishmongers' Co.*, 1 Keen, at p. 501.

(l) *Att.-Gen. v. Cullum*, 1 Keen, 104. See *Att.-Gen. v. Holland*, 2 Y. & C. Ex. 683; *Att.-Gen. v. Bolton*, 3 Anst. 820.

(m) *Att.-Gen. v. Holland*, *supra*; *Att.-Gen. v. Berry*, 11 Jur. 114.

(n) *Att.-Gen. v. Smart*, 1 Ves. Sen. 72; *Att.-Gen. v. Gleg*, 1 Atk. 356; *Att.-Gen. v. Hartley*, 2 J. & W. at p. 370; and see *Mayor of Southmollon v. Att.-Gen.*, 5 H. L. C. at p. 39.

(o) *Att.-Gen. v. Berry*, *supra*.

(p) *Att.-Gen. v. Middleton*, 2 Ves. Sen. 326.

the Court, and a trustee can only be deprived of them where he has been guilty of misconduct (*q*).

Trustees, who have not been guilty of misconduct, are consequently entitled to be recouped all costs of proceedings, as, for instance, the difference between solicitor and client and party and party costs, which they do not recover from an opponent. Similarly, if the persons ordered to pay costs cannot do so, the costs must come out of the charity funds (*r*).

And trustees have a right to reimburse themselves out of any funds in their hands all expenses properly incurred in performing the duties of their trust (*s*).

The case is different where the trustees have been guilty of a breach of trust.

Thus, where they have, whether they be individuals or a corporation, mismanaged the charity funds and neglected its objects, they will be liable to costs (*t*). Trustees fixed with costs.

So, also, where they had suppressed and concealed evidence (*u*), although such suppression was due merely to neglect to examine deeds and papers in their possession (*x*), and where they had acted improperly in the appointment of a schoolmaster (*y*).

Similarly, trustees may be fixed with costs where they have by their conduct given occasion to the suit (*z*), or have acted vexatiously (*a*), or where they set up a claim to continue a misapplication of the funds adversely to the charity (*b*), or to be entitled to the property beneficially (*c*).

In *Att.-Gen. v. Webster* (*d*), trustees who defended an information brought for the purpose of having it declared that certain trusts were charitable, although they had been advised that they were charitable, were not allowed costs. But the Attorney-General did not press for costs against them personally.

When part of charity property was held to be forfeited by reason of a breach of condition by the trustees, and they after-

(*q*) See *Cotterell v. Stretton*, L. R. 8 Ch. at p. 302; *Farrow v. Austin*, 18 Ch. D. 58; *Turner v. Hancock*, 20 Ch. D. 304; *Re Sarah Knight's Will*, 26 Ch. D. 82; *Re Love, Hill v. Spurgeon*, 29 Ch. D. 348.

(*r*) *Att.-Gen. v. Lewis*, 8 Beav. 179.

(*s*) *Att.-Gen. v. Mayor of Norwich*, 2 My. & C. 406, 424.

(*t*) *Haberdashers' Co. v. Att.-Gen.*, 2 Bro. P. C. 370, Toml. ed. See also *Att.-Gen. v. Mercers' Co.*, 2 My. & K. 664, where the trustees were ordered to pay all the costs, except those which were incurred by the necessity of settling a scheme.

(*u*) *Borough of Hertford v. Poor of Hertford*, 2 Bro. P. C. 377, Toml. ed.

(*x*) *Att.-Gen. v. Corporation of East Retford*, 2 My. & K. 35.

(*y*) *Town of Salop v. Att.-Gen.*, 2 Bro. P. C. 402, Toml. ed.; *Att.-Gen. v. Lord Carrington*, 4 De G. & Sm. 140.

(*z*) *Att.-Gen. v. Corporation of Stafford*, Barnard. 33; *Att.-Gen. v. Murdoch*, 2 K. & J. 571.

(*a*) *Att.-Gen. v. Stroud*, 19 L. T. N. S. 545.

(*b*) *Att.-Gen. v. Drapers' Co.*, 4 Beav. 67; *Att.-Gen. v. Christ's Hospital*, *ibid.* 73.

(*c*) *Att.-Gen. v. Webster*, L. R. 20 Eq. 483, 492. See also *Att.-Gen. v. Mercers' Co.*, 18 W. R. 449.

(*d*) *Supra*.

wards appeared upon an appeal from that decision, they were held not entitled to their costs, the only fund out of which such costs would be payable being no longer in possession (e).

Costs of conveyance to new trustees.

When charity trustees have been removed on account of misconduct, they will be directed to convey the trust property to the new trustees at their own expense (f).

Breach of trust beneficial to charity.

Even though the breach of trust has been beneficial to the charity, yet the trustees are liable to the costs of an inquiry respecting it (g).

Exceeding sum allowed for building.

Trustees who had greatly exceeded the estimate for building authorised by the Court were disallowed the costs of an inquiry whether the expenditure was for the benefit of the charity (h).

Mixing charity lands with others.

And where a corporation, in granting building leases, &c., in breach of trust, had mixed up charity lands with their own, they were not allowed costs, notwithstanding that the property of the charity had been improved by the breaches of trust (i).

Accounts showing balance due to trustees.

Similarly, where the balance of accounts when taken was found to be in favour of the trustees, they were, nevertheless, deprived of their costs because they had attempted to overcharge the charity funds by claiming a larger balance (k).

Costs of Act of Parliament.

Trustees have been held entitled to the costs of obtaining an Act of Parliament to regulate the charity, although the sanction of the Court had not been obtained (l); but not of an unsuccessful attempt to obtain an Act for that purpose (m). But the costs of an unsuccessful attempt to obtain an Act of Parliament, when the sanction of the Court had been previously given, were allowed, as also were the costs of a subsequent application for leave to bring in a fresh Bill (n).

Innocent breach of trust.

When breaches of trust have been innocently committed by trustees and their predecessors for a long period, the trustees may be allowed costs out of the charity funds.

Thus, where Unitarians had wrongfully been allowed to participate in a charity, Sugden, L. C., said (o): "No doubt the general rule is, as it has been stated to be, that a trustee who acts wrongly,

(e) *Att.-Gen. v. Grainger*, 7 W. R. 684.

(f) *Mayor of Coventry v. Att.-Gen.*, 7 Bro. P. C. 235; *Ex parte Greenhouse*, 1 Madd. at p. 109.

(g) *Sol.-Gen. v. Corporation of Bath*, 13 Jur. 866.

(h) *Att.-Gen. v. Armitstead*, 19 Beav. 584.

(i) *Sol.-Gen. v. Corporation of Bath*, *supra*.

(k) *Att.-Gen. v. Brewers' Co.*, 1 P. Wms. 376.

(l) *Att.-Gen. v. Vigor*, and *Case of*

Downing College, both cited 2 Russ. at p. 519.

(m) *Att.-Gen. v. Earl of Mansfield*, 2 Russ. 501, 518, 519.

(n) *Re Bedford Charity*, 29 L. T. 5. With regard to the costs of an information to restrain a corporation from improperly presenting a Bill to Parliament, see *Sol.-Gen. for Ireland v. Lord Mayor of Dublin*, 1 L. R. Ir. 166.

(o) *Att.-Gen. v. Drummond*, 3 Dr. & W. 163, 164. See, however, *Shaw v. Wilson*, 9 Cl. & F. 355, where the trustees were not allowed their costs.

and against whom there has been a decision, is not entitled to costs. But it can hardly be said that the rule applies to a case of this nature, where for more than a century the funds have been applied in a manner in which the parties are now found fault with for having so applied them. I should treat the present trustees with great hardship if I were now to decide that they were not entitled to their costs when all their predecessors have escaped. The case is different from that of private trustees, where each must suffer for the consequences of his own mistake. Here there has been a succession of trustees, and were I to refuse the present trustees their costs, it would be, in fact, to visit upon them individually the error of their predecessors."

In another case (*p*), where the charitable funds had been misapplied by the trustees and their predecessors for two centuries without any improper motive, but, as a result of economy on their part, there had been considerable accumulations of charity property, the trustees were allowed costs out of the accumulated funds.

It was held that the charity trustees could not be visited with costs in consequence of an error of the Charity Commissioners with regard to the construction of a public statute (*q*).

A trustee or member of a corporation severing his defence and supporting a successful information will be allowed his costs (*r*).

A municipal corporation, as altered by the Municipal Corporations Act (*s*), was a continuation of the old corporation. They were accordingly held not entitled to costs of an action brought against them for a breach of trust committed by their predecessors (*t*). In another case a municipal corporation was, under similar circumstances, fixed with costs (*u*).

If the Court does not think proper to allow charity trustees their costs, they are not entitled to charge those costs on the charity estate, and if they do so they will be ordered to restore to the charity funds the sums so misapplied (*x*).

In *Att.-Gen. v. Daugars* (*y*), trustees who had been ordered to pay costs personally paid them out of the charity fund. Upon an information by the Attorney-General, they were ordered to refund the amount, with 4 per cent. interest.

Proceedings caused by error of Charity Commissioners.

Severing defence.

Municipal corporation.

Trustees not given costs cannot retain them out of charity estate.

(*p*) *Att.-Gen. v. Caius Coll.*, 2 Keen, 150.

(*q*) *Moore v. Clench*, 1 Ch. D. at pp. 450, 451.

(*r*) *Att.-Gen. v. Corporation of Chester*, 14 Beav. 33; *Att.-Gen. v. Mercers' Co.*, 18 W. R. 443.

(*s*) 5 & 6 Will. IV. c. 76.

(*t*) *Att.-Gen. v. Kerr*, 2 Beav. 420.

(*u*) *Att.-Gen. v. Corporation of Leicester*, 9 Beav. 546.

(*x*) *Att.-Gen. v. Mercers' Co.*, *supra*.

(*y*) 33 Beav. 621.

Costs of
setting aside
lease.

Persons who have taken an improvident lease of charity lands will be fixed with the costs of an action to set it aside (*z*).

Where the lease had been made in pursuance of a direction which the Court held to be void as a perpetuity, the relators, who were also the lessors, were ordered to pay the lessee's costs (*a*).

Costs between
co-defendants.

Where an information was filed by the Attorney-General without a relator, the Court would, even under the old practice, make a decree as to payment of costs between co-defendants (*b*). The costs of trustee defendants, as between solicitor and client, would be ordered to be taxed and paid out of the charity fund, and such costs, as between party and party, to be repaid by the defendants, who were declared liable to the costs (*c*).

Under the present practice "it is no longer necessary or proper to order a plaintiff to pay the costs of a defendant, and have them over again against another defendant, so that if the second defendant is insolvent the plaintiff loses them. The proper form of order now is to order the defendant who is liable to them, as between himself and his co-defendant, to pay them to the co-defendant" (*d*).

Proceedings
before Att.-
Gen.

Costs of proceedings before the Attorney-General for the purpose of obtaining his fiat to filing an information rendered necessary by the opposition of the defendants, were held costs of the cause payable by the defendants under a decree directing payment to the plaintiffs of their costs of the suit and information (*e*). So, also, were the costs of proceedings before the Attorney-General pending an appeal to induce him to withdraw his fiat (*f*).

The Court has, however, no jurisdiction to make an adverse order for payment of costs incurred in proceedings before the Attorney-General not taken with the direction and sanction of the Court (*g*).

Persons
making sug-
gestions on
appointment
of trustees.

Costs of persons appearing in conformity with a public notice, by which parties were invited to make objections or suggestions as to a proposed appointment of trustees under the Municipal Corporations Act, were not allowed out of the charity estate (*h*).

(*z*) *Att.-Gen. v. Lord Hotham, T. & R.* at pp. 220—222. And see *Att.-Gen. v. Owen*, 10 Ves. at p. 562. In the latter case the lessee was not made to pay the costs, but Lord Eldon said that it was not to be taken as a precedent.

(*a*) *Att.-Gen. v. Greenhill*, 3 N. R. 236.

(*b*) *Att.-Gen. v. Chester*, 14 Beav. at p. 341.

(*c*) *Ibid.* And see *Att.-Gen. v. Mercers' Co.*, 18 W. R. at p. 450.

(*d*) Per Jessel, M. R., in *Rudow v. Great Britain, &c. Society*, 17 Ch. D. at p. 608.

(*e*) *Att.-Gen. v. Corporation of Halifax*, L. R. 12 Eq. 262.

(*f*) *Ibid.*

(*g*) *Att.-Gen. v. Harper*, 8 L. J. Ch. 12.

(*h*) *Re Gloucester Charities*, 10 Hare, App. iii.

Costs of particular proceedings which the Court considers to have been improper may be excepted from the general costs of the action (*i*).

Costs of particular proceedings excepted from general costs.

The Court of Chancery always had, and the High Court of Justice, as inheriting the powers of the Court of Chancery, now has, power in matters of equitable jurisdiction to order a party who fails to pay the costs of the action as between solicitor and client (*k*).

Jurisdiction to give solicitor and client costs.

Thus, where an unsuccessful action was brought against a bishop to restrain the induction of a particular person, solicitor and client costs were given (*l*).

So, also, where unjustifiable proceedings are brought against charity trustees, the plaintiff will sometimes be ordered to pay the trustees solicitor and client costs, for the purpose of preserving the charity fund (*m*).

Unjustifiable proceedings against trustees.

Costs of all parties have in many cases been allowed out of a charity fund as between solicitor and client (*n*). But there is no rule in this respect (*o*).

Solicitor and client costs of all parties sometimes allowed.

The costs of all parties in the case of appeals should not be allowed too generally out of the charity funds, "because such allowance rather encourages appeals where they are known and felt to be absolutely desperate" (*p*).

Appeals.

With regard to proceedings for the administration of the assets of a deceased person, the general rule is that wherever the proceedings are rendered necessary by the nature of the deceased's will, or by the circumstances of his property, the costs are thrown upon his general personal estate (*q*).

Costs of administration, when paid out of estate.

The costs of proceedings to establish charitable legacies are accordingly often allowed out of the testator's general assets (*r*).

Where a bill was filed for the payment of a charitable legacy, although the Court decided that it was not payable, nevertheless, as it was a proper case to be brought under its consideration, it was dismissed without costs (*s*).

(*i*) *Att.-Gen. v. Ward*, 11 Beav. 203, 208.

(*k*) *Andrews v. Barnes*, 39 Ch. D. 133.

(*l*) *Edenborough v. Archbishop of Canterbury*, 2 Russ. 93.

(*m*) *Att.-Gen. v. Cuming*, 2 Y. & C. C. C. at p. 155; *Edenborough v. Archbishop of Canterbury*, *supra*, at p. 112; *Andrews v. Barnes*, *supra*.

(*n*) *Moggridge v. Thackwell*, 7 Ves. at p. 88; *Bishop of Hereford v. Adams*, *ibid.* at p. 332; *Mills v. Farmer*, 19 Ves. at p. 491; *Att.-Gen. v. Carte*, 1 Dick. 113; *Gaffney v. Herey*, 1 Dr. & Wal. at p. 25; and see *Wickham v. Marquis of*

Bath, L. R. 1 Eq. 17, 25; *Att.-Gen. v. Stewart*, L. R. 14 Eq. at p. 25.

(*o*) *Aria v. Emanuel*, 9 W. R. 366. And see *Wilkinson v. Barber*, L. R. 14 Eq. at p. 99.

(*p*) Per Lord Cranworth in *Bruce v. Presbytery of Deer*, L. R. 1 H. L. Sc. 96, 98.

(*q*) *Philpott v. Governors of St. George's Hospital*, 6 H. L. C. 338. See *Morgan & Wurtzburg on Costs*, p. 165.

(*r*) *Kirkbank v. Hudson*, 7 Price, at p. 222; *Att.-Gen. v. Hinzman*, 2 J. & W. at p. 278; *Daley v. Att.-Gen.*, 11 Ir. Ch. R. 41.

(*s*) *Giblett v. Hobson*, 5 Sim. at p. 662.

When not borne by estate.

Where the legacy has been severed from the bulk of the estate and becomes the subject of litigation, the costs are thrown upon that particular fund, and not upon the general estate. The meaning of this rule is, that if the executors, admitting the legacy to be payable, sever it from the estate, the costs occasioned by a dispute between the persons to whom or some of whom the legacy belongs must be borne by the fund. But if the contest is between the persons claiming the legacy and the general estate, the costs are borne by the estate; for there can be no severance within the meaning of the rule until it has been decided that the legacy is payable. The mere fact that the executors have set apart a sum to answer the legacy if it should turn out to be payable is not a severance (*t*).

Costs of trustees paying legacy into Court.

And the costs of trustees paying a charitable legacy into Court under the Trustee Relief Act must be borne by the general estate, and cannot be thrown upon the fund paid into Court (*u*).

Proceedings to secure legacy.

But the costs of proceedings to appropriate and secure a legacy, the estate having been administered, and a sum set apart to answer it, were ordered to be borne by the particular fund (*x*).

Interest on costs.

Under 1 & 2 Vict. c. 110, ss. 17 and 18, costs ordered to be paid by one party to another carry interest at 4 per cent. per annum. But this does not apply to cases where costs are ordered to be paid out of an estate (*y*).

By sect. 27 of 23 & 24 Vict. c. 127, payment of costs previously taxed may be ordered with interest at 4 per cent.

Costs of heir-at-law.

The costs of the heir-at-law, where no improper point is raised on his part, will be allowed, although the Court may decide against his claim (*z*).

Generally as between solicitor and client.

And he will generally obtain costs as between solicitor and client (*a*). But it appears that he is not entitled to solicitor and client costs as of right (*b*). Where an heir-at-law filed a bill for the purpose of having charitable bequests declared void under 9 Geo. II. c. 36, a bill having previously been filed for establishing the will and carrying the trusts into execution, Lord Thurlow held

(*t*) *Att.-Gen. v. Lawes*, 8 Hare, 32, 43, 44.

(*u*) *Re Birkett*, 9 Ch. D. 576, 581.

(*x*) *Governesses' Benevolent Institution v. Rusbridger*, 18 Beav. 467.

(*y*) *Att.-Gen. v. Nethercote*, 11 Sim. at p. 530. See *Att.-Gen. v. Bishop of St. David's*, Set. 4th ed. pp. 555, 556, where interest at 4 per cent. was calculated on the costs, charges, and expenses of the Attorney-General, relators, and trustees.

(*z*) *Att.-Gen. v. Haberdashers' Co.*, 4 Bro. C. C. 177; *Currie v. Pye*, 17 Ves. 462.

(*a*) *Att.-Gen. v. Haberdashers' Co.*, and *Currie v. Pye*, *supra*; *James v. James*, 11 Beav. 397.

(*b*) *Whicker v. Hume*, 14 Beav. at p. 528. And see *Aria v. Emanuel*, 9 W. R. 366; *Wilkinson v. Barber*, L. R. 14 Eq. at p. 99.

that the bill of the heir-at-law was unnecessary, and ordered the costs of it to come out of the real estate (c).

An heir-at-law may sometimes be allowed charges and expenses in addition to his costs (d). Charges and expenses.

Similarly, next of kin, if no improper point is raised by them, will commonly be allowed costs as between solicitor and client (e). But they are not entitled to them as of right, and such costs have been refused to next of kin who unsuccessfully opposed a charitable bequest (f). Next of kin.

In the first instance, at least, costs should fall upon the property recovered by the proceedings. But if justice to the relator or the interests of the charity render it necessary, they will be ordered to be paid out of the charity funds generally (g). Costs, how paid out of charity fund.

Where there were two classes of estates in question, as to one of which the defendants were successful in maintaining a claim for surplus income, and as to the other of which they failed, the costs were apportioned equally, except that the costs of the establishment of a scheme relating to one estate only were ordered to be borne by that estate (h). Apportionment.

Where one reference had been made to settle a scheme as to twenty charities, the costs were paid out of an existing available fund belonging to three of them, but it was ordered that they should be ultimately borne by all rateably (i).

A relator who had obtained an order for payment of his costs by a corporation was held entitled to charge them upon a fund standing in trust for the corporation, arising from the proceeds of sale of property belonging to the corporation (k). Charge of costs on fund held in trust for corporation.

Costs will, if necessary, be ordered to be raised by mortgage of part of the charity estates (l). Mortgage for costs.

Where a testator had created several charities, and vested their respective properties in the same trustees, it was held that the charities were distinct, and that costs of proceedings relating to one could not be paid out of the property of the others (m). Costs of one charity cannot be paid out of funds of another.

(c) *Leacroft v. Maynard*, 1 Ves. Jun. 279.

(d) *Att.-Gen. v. Haberdashers' Co.*, 4 Bro. C. C. 177; *Att.-Gen. v. Kerr*, 4 Beav. at p. 299, per Lord Langdale.

(e) *Carter v. Green*, 3 K. & J. at p. 608; *Gaffney v. Hevey*, 1 Dr. & Wal. 25. See *Lewis v. Allenby*, 18 W. R. 1127.

(f) *Wilkinson v. Barber*, L. R. 14 Eq. at p. 99.

(g) *Att.-Gen. v. Kerr*, 4 Beav. 297.

(h) *Att.-Gen. v. Skinners' Co.*, 2 Russ. at p. 446.

(i) *Re Stafford Charities*, 26 Beav. 567. For forms of order for apportionment of costs, see *Re Saffron Walden Charities*, Set. 4th ed. p. 555.

(k) *Att.-Gen. v. Corporation of Thetford*, 8 W. R. 467.

(l) *Att.-Gen. v. Archbishop of York*, 17 Beav. 495; *Att.-Gen. v. Bishop of St. David's*, Set. 4th ed. pp. 555, 556; *Re Lambeth Charities*, Set. 4th ed. pp. 552, 553; Shelf. Mortm. 478; and *Att.-Gen. v. Atherstone School*, there cited.

(m) *Att.-Gen. v. Grainger*, 11 W. R. 684.

Costs of
petition.

Where there are substantial grounds for presenting a petition, the petitioners are entitled to their costs (u).

Improper
petition.

But the petitioners will not be allowed the costs of a vexatious application (o). And in a recent case trustees were not allowed the costs of an abortive petition (p).

Where a petition under Romilly's Act had been improperly presented, the case being difficult and complicated, it was dismissed with costs to be paid by the petitioners, and not out of the charity funds (q).

Party setting
up improper
claim.

An unnecessary party who had been served with a petition in consequence of a claim set up by him had to bear his own costs (r).

Proceedings
subsequent to
petition.

A party personally interested in a charity is entitled to his costs of attending the proceedings at chambers subsequent to the petition. But he will not be allowed out of the charity funds costs of attendances at chambers in regard to matters in which he is not interested. And where the charity is not likely to derive benefit from the attendance of parties at chambers, and they have no individual interest, they will only be allowed to attend at their own expense (s).

Costs of
application
under special
Act.

Where an application is made under a special Act, the Court has no general jurisdiction to award costs. It can only give them in cases in which it is authorized to do so by the special Act (t). Nor is the power of the Court in this respect increased by R. S. C. 1883, Ord. LXV. r. 1 (u).

Costs given
by Lord
Chancellor
as visitor.

The Lord Chancellor, on petition to him as visitor on behalf of the Crown, has power to award costs (x).

Charity Com-
missioners
may direct
taxation.

The Charity Commissioners have power, under sect. 40 (y) of the Charitable Trusts Amendment Act, 1855, to order solicitors' bills of costs for business transacted on behalf of a charity or the trustees thereof to be taxed by the taxing masters.

The Commissioners have no power themselves to tax a bill of

(u) *Re Storie's University Gift*, 2 De G. F. & J. 529. See also *Re St. Pancras Burial Ground*, L. R. 3 Eq. at p. 192. With regard to the costs of a petition under 8 & 9 Vict. c. 70, see *Re Lambeth Charities*, and *Att.-Gen. v. Earl Craven*, both cited Set. 4th ed. pp. 552, 553.

(o) *Chertsey Market Case*, 6 Price, 281.
(p) *Re Poplar and Blackwall Free School*, 8 Ch. D. 543. See also *Att.-Gen. v. Stewart*, L. R. 14 Eq. 17.

(q) *Re Phillipotti's Charity*, 8 Sim. 381, 392.

(r) *Re Shrewsbury School*, 1 Mac. & G. 85.

(s) *Re Shrewsbury Grammar School*, 1 Mac. & G. 324, 334. The costs of

attendances at chambers are now regulated by R. S. C. 1883, Ord. LV. rr. 40—43.

(t) *Re Bedford Charity*, 2 Swanst. at p. 532.

(u) See *Re Mills' Estate*, 34 Ch. D. 24.

(x) *Case of Queen's College*, Jac. at p. 47. So, also, the Lord Chancellor could give costs on an appeal from the Commissioners of Charit. Uses: *Aylet v. Dodd*, 2 Atk. 238; *Corporation of Burford v. Lenthall*, *ibid.* 550. The Commissioners themselves, however, had no power to award costs: *Aylet v. Dodd*, *supra*.

(y) *Post*.

costs, but there is nothing to prevent them from making it a condition of a bill not being referred to taxation that such deductions shall be made as they consider right.

A company or other body taking land compulsorily under any Act incorporating the Lands Clauses Consolidation Act, 1845, may, under sect. 80 (s), be ordered to pay the costs (including reasonable charges and expenses) of applying the purchase-money in the purchase of land, and of investing it in Government or real securities, and re-investing it in other land, and the costs of obtaining the proper orders for any of such purposes, and of orders for payment of dividends and interest, and for payment out of Court of the principal moneys or investments, and of all proceedings relating thereto, except such as are caused by litigation between adverse claimants (a). The costs of one application only for re-investment in land are allowed, except where the Court thinks that it is for the benefit of the parties that the funds should be invested in the purchase of lands in different sums and at different times.

Costs under
s. 80 of Lands
Clauses Act.

The company must, under the above section, pay the costs of an application to invest money in Court under that Act in rebuilding (b), or in erecting temporary buildings (c). In *Re Lathropp's Charity* (d) trustees of a charity had been directed to apply money paid into Court in improving the water supply to the town in which the charity property was situated, and it was held that a petition for payment out for that purpose was either a petition for payment out or for re-investment, and that in either case the company must pay the costs of it.

Rebuilding,
&c.

The application of money in Court in the redemption of land tax is not expressly mentioned in this section; it is, however, treated as equivalent to re-investment in land, and the costs of an application for investment in the redemption of land tax must accordingly be paid by the company (e).

Redemption
of land tax.

The costs of enrolment of the conveyance of lands purchased with funds in Court must be paid by the company (f).

Enrolment.

Where a petition is presented for payment or transfer of a fund in Court to the official trustees of charitable funds for the purpose

Payment out
to official
trustees.

(s) See *post*, App. I.

(a) See *Re St. Panoras Burial Ground*, L. R. 3 Eq. at p. 192.

(b) *Re Thorner's Charity*, 12 L. T. O. S. 286; *Ex parte Dean and Chapter of Canterbury*, 10 W. R. 505; *Ex parte Jesus Coll., Cambridge*, 50 L. T. N. S. 583; *Ex parte Parson of St. Alphage*, 55 L. T. N. S. 314; *Re Trustees of Lymington Baptist Chapel*, W. N. 1877, 226. In *Re Buckinghamshire Ry. Co.*, 14 Jur. 1065, the costs of obtaining an order for

investment in the alteration of almshouses were held not payable by the company.

(c) *Re St. Thomas' Hospital*, 11 W. R. 1018.

(d) L. R. 1 Eq. 467.

(e) *Re Vicar of Queen Camel*, 11 W. R. 503; *Re L. B. & S. C. Ry. Co.*, 18 Beav. 608; *Re Bethlehem Hospital*, L. R. 19 Eq. 467; *Ex parte Hospital of St. Katharine*, 17 Ch. D. 378.

(f) *Re Governors of Christ's Hospital*, 12 W. R. 669.

of its being re-invested in land, the costs of the payment or transfer only are payable by the company, and not the costs of the subsequent re-investment (*g*).

Payment of dividends.

Where the dividends of a sum in Court have been ordered to be paid to the existing trustees, the costs of an application, on an appointment of new trustees, for payment of dividends to them, are not payable by the company (*h*). But where the change of interest, rendering the application necessary, has been caused not by the act of the trustees, but by the reconstitution of the charity, the company will have to pay the costs (*i*).

Costs of new scheme and payment of dividends.

The company must pay the costs of a petition for payment out of part of the fund to meet the expenses of a new scheme and payment of dividends of remainder (*k*).

Costs of Att.-Gen.

Where the Attorney-General is required to be a party to the petition his costs must be paid by the company (*l*).

Land taken by two companies.

And where two companies take land the costs must be paid by them equally (*m*).

Private Act not incorporating Lands Clauses Act.

A charitable institution incorporated by charter, and having under a subsequent special Act power to take land compulsorily, is not an "undertaking or work" of a public nature within the meaning of sect. 1 of the Lands Clauses Consolidation Act, 1845 (*n*). The Lands Clauses Act is consequently not incorporated, and no order as to costs can be made under sect. 80 (*o*).

The Court in such a case has no power, unless there is an express provision in the special Act, to order costs of dealing with purchase-money of lands compulsorily purchased to be paid by the corporation (*p*).

(*g*) *Ex parte Trustees, &c. of Bishop Monk's Horfield Trust*, 29 W. R. 462; *Re Bristol Free Grammar School*, 47 L. J. Ch. 317. And see *Re L. B. & S. C. Ry. Co.*, 18 Beav. 608. Where payment or transfer to the Official Trustees of Charitable Funds is asked, the company or other body which took the land are relieved from costs of re-investment, to which, under sect. 80 of the Lands Clauses Act, they would otherwise have been liable. In consequence of this, the Charity Commissioners commonly make it a condition of giving their consent to an application for payment or transfer to the official trustees, that the company shall pay for the benefit of the charity some small percentage, usually varying from 2½ to 5 per cent., on the amount of the funds to be paid out or transferred. The certificate of the Charity Commissioners authorising the applica-

tion expressly states that it is subject to the stipulation that the company shall make the above-mentioned payment.

(*h*) *Re Andenshaw School*, 1 N. R. 255. The order in the first instance should be for payment of the dividends to the trustees for the time being. See *ante*, p. 283.

(*i*) *Re Shakespeares Walk School*, 12 Ch. D. 178; *Re St. Paul's Schools, Finsbury*, 62 L. J. Ch. 464.

(*k*) *Re Shakespeares Walk School*, *supra*.

(*l*) *Re L. B. & S. C. Ry. Co.*, 18 Beav. 608.

(*m*) *Ex parte Bishop of London*, 2 De G. F. & J. 14; *Ex parte Trinity Coll., Cambridge*, 18 L. T. N. S. 849.

(*n*) 8 & 9 Vict. c. 18.

(*o*) *Re Sion College*, 57 L. T. N. S. 743.

(*p*) *Re Mills' Estate*, 34 Ch. D. 24.

CHAPTER XIII.

LIABILITY TO FISCAL BURDENS, ETC.

Legacy and Succession Duty.

UNDER the Legacy Duty Act (*a*), no legacy duty was payable upon specific or pecuniary legacies, residues, or shares of residue of less amount than 20%. Duty formerly not payable on legacies under 20%.

It was held in one case (*b*), where a residue was bequeathed to executors to divide the interest among poor pious persons in ten or fifteen pounds as they should see fit, that inasmuch as the amount to be received by each beneficiary was less than 20% no legacy duty was payable. Each recipient of charity taking less than 20%.

The weight of authority was, however, against this decision, and it was held in several cases that where a legacy was given for public or charitable purposes, duty was payable by the trustees upon the whole amount, without regard to the amount of the sum receivable by any particular person taking a benefit under the gift (*c*). And the charitable legacy being considered to be a legacy to a stranger in blood, the rate of duty was 10 per cent. (*d*). Duty payable on whole sum.

The questions which arose in the cases above referred to were set at rest by the Succession Duty Act (*e*), under which gifts for charitable purposes were in any case made liable to duty at 10 per cent. (*f*). Succession Duty Act.

That Act enacts (*g*), that "Where property shall become subject to a trust for any charitable or public purposes, under any past or future disposition, which, if made in favour of an individual, would

(*a*) 55 Geo. III. c. 184, Sched. Part III.

(*b*) *Re Wilkinson*, 1 C. M. & R. 142, affirmed nom. *Att.-Gen. v. Nash*, 1 M. & W. 237.

(*c*) *Re Franklin's Charity*, 3 Sim. 147; 3 Y. & J. 544; *Att.-Gen. v. Fitzgerald*, 13 Sim. 83; *Re Griffiths*, 14 M. & W. 510; *Re Pearce*, 24 Beav. 491; *Harris v. Earl Howe*, 29 Beav. 261.

(*d*) See *Att.-Gen. v. Fitzgerald*, *supra*;

Re Parker, 4 H. & N. 666, where the legacy was for the endowment of a church. And see cases cited *supra*.

(*e*) 16 & 17 Vict. c. 51.

(*f*) See the remarks of Martin, B., and Watson, B., in *Re Parker*, 4 H. & N. at pp. 679—681. And see Hanson on Probate, &c. Duties, 3rd ed. pp. 287, 288.

(*g*) Sect. 16.

confer on him a succession, there shall be payable in respect of such property, upon its becoming subject to such trusts, a duty at the rate of 10% per centum upon the amount or principal value of such property; and it shall be lawful for the trustee of any such property to raise the amount of any duty due in respect thereof, with all reasonable expenses, upon the security of the charity property, at interest, with power for him to give effectual discharges for the money so raised."

Exemption
under
Succession
Duty Act.

Under the Succession Duty Act, no duty is payable "by any person in respect of a succession, who, if the same were a legacy bequeathed to him by the predecessor, would be exempted from the payment of duty in respect thereof under the Legacy Duty Acts" (h).

Legacy duty
now payable
on legacies of
any amount.

Under the Customs and Inland Revenue Act, 1881 (i), legacy duty is now payable on pecuniary legacies, residues, or shares of residue of any amount, whether under 20% or not. This provision does not extend to specific legacies.

Rate of duty.

As regards persons dying on or after the 1st July, 1888, the rate of duty, both in the case of legacies and successions, has been increased from 10 to 11½ per cent. (j).

Exemption
from legacy
duty.

No legacy duty is payable where the whole personal estate of the deceased is less than 100% (k).

Exemption in
favour of
bodies cor-
porate, &c.

No duty is payable on a legacy of books, prints, pictures, statues, gems, coins, medals, specimens of natural history, or other specific articles, bequeathed to or in trust for any body corporate, whether aggregate or sole, or any of the Inns of Court, or Chancery, or any endowed school, in order to be kept and preserved by such body corporate, society or school, and not for the purpose of sale (l).

This does not extend to trustees for public purposes who are not incorporated, as the trustees of the National Gallery or the South Kensington Museum. But the Commissioners of Inland Revenue have authority from the Treasury to remit the duty in the case of gifts to the nation, and this is always done (m).

Exemptions
in favour of
particular
charitable
institutions.

Bequests to hospitals or charitable institutions are sometimes exempted from legacy duty. For instance, 42 Geo. III. c. 99, s. 4, exempted from duty a legacy bequeathed in trust for the purpose of erecting and endowing a public hospital and infirmary at

(h) Sect. 18. This would exempt charitable successions in Ireland from duty.

(i) 44 Vict. c. 12, s. 42.

(j) Customs and Inland Revenue Act, 1888 (51 Vict. c. 8), s. 21, sub-s. (2).

(k) Customs and Inland Revenue Act, 1880 (43 Vict. c. 14), s. 13. And, with

regard to cases where the estate does not exceed 300%, see Customs and Inland Revenue Act, 1881, ss. 35 and 36.

(l) 39 Geo. III. c. 73; 55 Geo. III. c. 184, Sched. Part 2.

(m) See Hanson on Probate, &c. Duties, 3rd ed. p. 216.

Bedford, for the reception and relief of sick and lame objects within that county.

The Act 5 & 6 Vict. c. 82 (*n*), which was passed to assimilate the stamp duties in Great Britain and Ireland, and to make regulations for collecting and managing the same, provides (*o*) that "nothing herein contained shall extend to, or be construed to extend to, charge with duty in Ireland any legacy given for the education or maintenance of poor children in Ireland, or to be applied in support of any charitable institution in Ireland, or for any purpose merely charitable" (*p*).

Irish charities.

The exemption does not extend to legacies absolute on the face of the will, but bound by a secret trust for charitable purposes (*q*).

Secret charitable trust.

Nor does it apply, unless it appears upon the face of the will that the charitable purposes are to be confined to Ireland.

Charitable purposes must be confined to Ireland.

Thus, legacies by a domiciled Irishman to charities in Scotland and England are subject to duty (*r*). The same was the case with a bequest to an Irish college "for the education of clergymen for the foreign mission" (*s*); a bequest by an Irish parish priest of "all my property to the poor" (*t*). A bequest for the general support of the nuns of a certain Irish convent was held to be exempt from duty (*u*).

If the testator is domiciled in England duty is payable, although the legacy is for charitable purposes in Ireland (*x*).

Testator must be domiciled in Ireland.

Stamps.

In the Stamp Act, 1870 (*y*), an exemption is contained of an "instrument relating to any poor child apprenticed by, or at the sole charge of, any parish or township, or by or at the sole charge of any public charity, or pursuant to any Act for the regulation of parish apprentices."

Apprenticeship premiums.

To constitute a public charity it is not essential that the fund should be of a permanent character. A premium payable out of the yearly contributions of the inhabitants of a parish is considered to be payable out of a public charity (*z*); and it is

(*n*) Repealed by 33 & 34 Vict. c. 99.

(*o*) Sect. 38.

(*p*) "Charitable purpose" was construed in accordance with the meaning which the Courts ordinarily assign to "charity": *Att.-Gen. v. Bagot*, 13 Ir. C. L. Rep. 48. See, however, *post*, pp. 364 *et seq.*

(*q*) *Cullen v. Att.-Gen. for Ireland*, L. R. 1 H. L. 190.

(*r*) *Att.-Gen. v. Hope*, Ir. R. 2 C. L. 368.

(*s*) *Att.-Gen. v. Delaney*, Ir. R. 10

C. L. 104.

(*t*) *Kenny v. Att.-Gen.*, 11 L. R. Ir. 253.

(*u*) *Mahony v. Duggan*, 11 L. R. Ir. 260.

(*z*) *Att.-Gen. v. Fitzgerald*, 3 Dr. 610. See *Att.-Gen. v. Fitzgerald*, 13 Sim. 83, where the point was not raised.

(*y*) 33 & 34 Vict. c. 97, repealing 55 Geo. III. c. 184, which contained a similar exemption.

(*z*) *Rees v. Inhabitants of St. Matthew's, Bethnal Green*, Burr. S. C. 574.

immaterial that a discretion as to the mode of application is vested in an individual (*a*).

Where a gift is general, as, for instance, for "binding out apprentices," the individuals to be benefited not being designated, the funds are considered as belonging to a public charity (*b*).

Where there is no duty payable in consequence of the above-mentioned exemption, it is unnecessary to insert the amount of the premium in the indenture of apprenticeship (*c*).

A party relying on the exemption must be prepared to prove that a premium which the deed recites to have been paid out of the funds of a public charity was actually paid from such a source, otherwise the deed will not be admissible as evidence (*d*).

Proceedings
under
Romilly's
Act.

Petitions and other proceedings under Romilly's Act (*e*), and copies of such petitions and proceedings, are not liable to stamp duty (*f*).

Orders of
Charity Com-
missioners.

An order of the Charity Commissioners appointing new trustees of a charity, and vesting the charity property in them, requires a stamp of 10s. in respect of the appointment, and a further stamp of the like amount in respect of the vesting order. The vesting order does not come within the proviso to sect. 78 of the Stamp Act, 1870, as "a conveyance or transfer made for effectuating the appointment of a new trustee," but is a separate and distinct matter (*g*).

Bond under
sect. 79 of
Charit.
Trusts Act,
1853.

The bond given by parties who appeal under the 39th section (*h*) of the Charitable Trusts Act, 1853, is exempt from stamp duty.

Certificate of
incorporation.

Every application for a certificate of incorporation under the Charitable Trustees Incorporation Act, 1872, and every certificate of incorporation, requires a stamp of 10s. (*i*).

Income Tax.

Allowances
under Sched.
A. of 5 & 6
Vict. c. 35.

By sect. 61 of the Property Tax Act, 1842 (*k*), it is provided that under Schedule A. the following allowances shall be made (*l*):—

Colleges and
halls of
universities.

"For the duties charged on any college or hall in any of the universities of Great Britain, in respect of the public buildings and offices belonging to such college or hall, and not occupied by any individual member thereof, or by any person paying rent for the same, and for the repairs of the public buildings and offices of such

(*a*) *Rex v. Clifton - upon - Dunmore*, Burr. S. C. 697.

(*b*) *Rex v. Halesworth*, 3 B. & Ad. 717.

(*c*) *Rex v. Quainton*, 2 M. & S. 338; *Rex v. Oadby*, 1 B. & Al. 477.

(*d*) *Rex v. Skeffington*, 3 B. & Al. 382. See Tilsley on Stamps, 3rd ed. 59—61.

(*e*) 52 Geo. III. c. 101.

(*f*) Sect. 3, *ante*, p. 329.

(*g*) *Hadgett v. Commissioners of Inland Revenue*, 3 Ex. D. 46.

(*h*) *Post*.

(*i*) See sect. 9 of the Act, *post*.

(*k*) 5 & 6 Vict. c. 35.

(*l*) Rule No. VI.

college or hall, and the gardens, walks, and grounds for recreation repaired and maintained by the funds of such college or hall :

“Or on any hospital, public school, or almshouse, in respect of the public buildings, offices, and premises belonging to such hospital, public school, or almshouse, and not occupied by any individual officer or the master thereof, whose whole income, however arising, estimated according to the rules and directions of this Act, shall amount to or exceed 150*l.* per annum, or by any person paying rent for the same, and for the repairs of such hospital, public school, or almshouse, and offices belonging thereto, and of the gardens, walks, and grounds for the sustenance or recreation of the hospitallers, scholars, and almsmen, repaired and maintained by the funds of such hospital, school, or almshouse, or on any building the property of any literary or scientific institution, used solely for the purposes of such institution, and in which no payment is made or demanded for any instruction there afforded, by lectures or otherwise ; provided also, that the said building be not occupied by any officer of such institution, nor by any person paying rent for the same :

Hospitals,
public schools,
almshouses,
and literary
institutions.

“The said allowances to be granted by the Commissioners for General Purposes in their respective districts :

“Or on the rents and profits of lands, tenements, and hereditaments, or heritages belonging to any hospital, public school, or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes :

Rents of lands
belonging to
hospitals,
public schools,
and alms-
houses, or
vested in
trustees for
charitable
purposes.

“The said last-mentioned allowances to be granted on proof before the Commissioners for Special Purposes of the due application of the said rents and profits to charitable purposes only, and in so far as the same shall be applied to charitable purposes only :

“The said last-mentioned allowances to be claimed and proved by any steward, agent, or factor acting for such school, hospital, or almshouse, or other trust for charitable purposes, or by any trustee of the same, by affidavit to be taken before any Commissioner for executing this Act in the district where such person shall reside, stating the amount of the duties chargeable, and the application thereof, and to be carried into effect by the Commissioners for Special Purposes, and according to the powers vested in such commissioners, without vacating, altering, or impeaching the assessments on or in respect of such properties ; which assessments shall be in force and levied notwithstanding such allowances.”

By sect. 62, the Special Commissioners are to certify these allowances and order payment thereof.

Meaning of
"hospital,
public school,
or almshouse."

The City of London School, which is a school founded and carried on by the Corporation of London under the provisions of an Act of Parliament, not for profit but for the benefit of a large portion of the public, and maintained partly by a charitable endowment, is a public school within the meaning of the words "any hospital, public school, or almshouse" (*m*). Denman, J., said (*n*):—"The intention seems to have been to exempt not merely institutions which were purely charitable, but institutions *ejusdem generis* with the colleges and halls which form the first class of property exempted. There can be no doubt that the colleges and halls of the universities are not institutions wholly supported by charity. I think it is clear that the Legislature did not intend the exemptions to be in favour only of schools wholly supported by charity. The enactment seems to have been drawn with a mixed intention, namely, to exempt charitable institutions, and to exempt certain institutions partly depending on charity, perhaps in view of the beneficial character of the objects of those institutions."

An institution for the reception of insane persons, founded by charitable donations, but unendowed, and supported wholly out of payments made by patients, is not a "hospital" within the above exemption (*o*). In order to bring a case within the exemption there must be an annual charitable endowment.

"Charitable purposes."

The meaning of "charitable purposes" in the above section is the same as in sects. 88 and 105 (*p*).

Sched. C.
Stock or
dividends of
corporation,
&c., or trust
for charitable
purposes.

By sect. 88 of the same Act the following are exempted from duty under Schedule C:—"The stock or dividends of any corporation, fraternity, or society of persons, or of any trust established for charitable purposes only, or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, shall be applicable by the said corporation, fraternity, or society, or by any trustee, to charitable purposes only, and in so far as the same shall be applied to charitable purposes only; or the stock or dividends in the names of any trustees applicable solely to the repairs of any cathedral, college, church or chapel, or any building used solely for the purpose of divine worship, and in so far as the same shall be applied to such purposes; provided the application thereof to such purposes shall be

(*m*) *Blake v. Mayor, &c. of City of London*, 19 Q. B. D. 79.

(*n*) *Ibid.*, 18 Q. B. D. at pp. 444, 445.

(*o*) *Needham v. Bowers*, 21 Q. B. D. 436. Cf. *St. Andrew's Hospital, Northampton v. Shearman*, 19 Q. B. D. 624.

(*p*) *Infra*.

duly proved before the said Commissioners for Special Purposes by any agent or factor on the behalf of any such corporation, fraternity, or society, or by any of the members or trustees."

And it is provided by sect. 105, with regard to Schedule D, "That any corporation, fraternity, or society of persons, and any trustee, for charitable purposes only, shall be entitled to the same exemption in respect of any yearly interest, or other annual payment, chargeable under Schedule D of this Act, in so far as the same shall be applied to charitable purposes only, as is hereinbefore granted to such corporation, fraternity, society, and trustee respectively, in respect of any stock or dividend chargeable under Schedule C of this Act, and applied to the like purpose."

The meaning of "charitable purposes" in sects. 61, 88, and 105 of this Act, has been the subject of considerable diversity of opinion.

Up to a recent period the Commissioners of Inland Revenue in all, or at all events in almost all, cases acted upon the view that the words "charitable purposes" were to be construed in the sense which the Court of Chancery would have attributed to them in construing a deed or will, that is, purposes coming within the meaning or purview of 43 Eliz. c. 4. They have now, however, changed their practice, and they refuse exemption in many cases in which they formerly allowed it. The view which they have adopted seems to be founded on the position that parochial purposes, although clearly charitable within 43 Eliz. c. 4, are not "charitable purposes" within the meaning of the Property Tax Act (q).

In pursuance of the principle thus adopted, the Inland Revenue Commissioners refuse exemption in the case of trusts for religious and educational purposes, such as the building, maintenance, and repair (r) of churches and schools, the maintenance of divine

(q) See Parl. Paper (289), Sess. 1888, Income Tax on Charities. From this paper it appears that the change of practice was based on an opinion of Sir A. E. Cockburn and Sir Richard Bethell, the then law officers, given in 1856, in which they said that in their opinion there was "a plain distinction between parochial purposes and charitable purposes in the sense in which this last phrase is used in the Income Tax Acts." This opinion led, in 1863, to correspondence between the Inland Revenue and the Treasury, in which the Treasury, in answer to a question whether it would be proper for the Inland Revenue Commissioners to alter the practice which

they had up to that time adopted, and to act upon the opinion expressed by the law officers, replied that the actual administration of the tax might be held to have acquired so much of prescription as ought to stand good against any interposition by an authority purely administrative, that the subject was one which should be reserved to be dealt with by the legislature, and that in the meantime the practice which had up to that time prevailed should be followed. No statute with regard to the matter has ever been passed.

(r) Church repairs are, however, specially exempted when defrayed out of dividends, under Sched. C.

Sched. D.

Annual payments applied to charitable purposes only.

Meaning of "charitable purposes."

View taken by Inland Revenue Commissioners.

Cases in which Inland Revenue does not allow exemption.

worship, the payment of church expenses, the support of ministers and augmentation of stipends, foreign missions, promoting higher education, providing prizes, supplying lectures, newspapers, books, scientific apparatus, &c., or the maintenance of free libraries. They also refuse exemption in the case of trusts for parochial and general public purposes, such as the repair of highways and bridges, the public use and benefit of the inhabitants of a town, the relief of rates, and so forth (s).

View taken
by Charity
Commis-
sioners.

The Charity Commissioners, on the other hand, have always taken the view that "charitable purposes" must be extended to include all purposes charitable within the interpretation of 43 Eliz. c. 4. They have accordingly acted upon this view in giving to the Bank of England, under sect. 28 of the Charitable Trusts Amendment Act, 1855 (t), certificates of exemption from property or income tax in regard to stock in the public funds standing in the name of the official trustees of charitable funds and in the names of other persons.

*Baird's
Trustees v.
Lord Advocate.*

The question came, in 1888, before the Court of Session in Scotland in the case of *Baird's Trustees v. Lord Advocate* (u). It was there held that the building and endowment of churches were not "charitable purposes" within the meaning of the Act now in question, and that funds held upon trust for such purposes were not exempt from income tax. The Lord President said (x): "It appears to me that 'charity' and 'charitable' have one sense, and one only, in ordinary familiar and popular use. Charity is relief of poverty, and a charitable act or a charitable purpose consists of relieving poverty, and whatever goes beyond that is not within the meaning of the word charity as it occurs in this statute. The Court of Chancery, as we know, has extended the use of the word charity to very different purposes, to purposes of general benevolence and of public utility; but I think it is quite impossible, where we are applying the proper rule of construction of a taxing Act, to give it any such meaning here."

*Reg. v. Com-
missioners of
Income Tax.*

The matter has recently come before the Court of Appeal in England in *Reg. v. Commissioners of Income Tax* (y).

In that case freehold estates were vested in trustees upon trust to apply two-fourths of the income "for the purpose of maintaining, supporting, and advancing the missionary establishments among heathen nations" of the Protestant Episcopal Church, known as the Moravians; one-fourth "for and towards the maintenance,

(s) See Parl. Paper (289), Sess. 1888,
Income Tax on Charities.

(t) See this section, *post*.

(u) 15 Sess. Cas. (Ser. 4) 682.

(x) At p. 688.

(y) 22 Q. B. D. 296.

support, and education of the children of ministers and missionaries" of that church, "special regard being had to the children of such ministers as are least able to support the expense of their children's education;" and the remaining fourth to the maintenance of establishments for the residence and support of single women who had been engaged in the educational department of the Church and who had become incapacitated, widows of ministers or missionaries, and of poor members and single men whose chief employment was to look after the young and assist in education. It was held that these were charitable purposes within the meaning of sect. 61, rule No. VI. of 5 & 6 Vict. c. 35 (s), and that the rents and profits of the lands in question were exempt from income tax.

Lord Esher and Lopes, L. J., held that the phrase "charitable purposes" must be construed according to the popular meaning of the words, and neither in the wide sense placed upon them by the Court of Chancery, nor in the narrow sense of merely relief of physical want (a). And Lord Esher said (b), "I cannot help thinking that in the minds of all ordinary persons charity implies the relief of poverty, and I think there must be in the mind of the donor an intention to relieve poverty. It is not the mere fact that the person who receives what is given is poor constitutes a charity. A gift to a son or a poor relation is not a gift by way of charity, but by reason of the relationship. The paraphrase, therefore, which I adopt is this. Allowances are to be made in respect of the duties on the rents and profits of lands, tenements, hereditaments, or heritages vested in trustees where the rents and profits are given in trust to be expended in assisting people to something considered by the donor to be for their benefit, and which assistance the donor intends shall be given to people who, in his opinion, cannot without such assistance, by reason of poverty, obtain that benefit, and where the intention of the donor is to assist such poverty as the substantial cause of his gift." Applying the above definition, his lordship added, that a purpose which was charitable by reason of an intention to relieve poverty was none the less so because it was also religious or educational; and in the case before the Court, although the purposes were religious and educational, they were nevertheless designed for the relief of poverty, and were consequently charitable within the meaning of the Act.

Fry, L. J., arrived at the same ultimate result. He, however, considered that "charitable purposes" were to be construed in

(a) See *ante*, pp. 360, 361.

(a) See p. 307.

(b) At pp. 307, 308.

accordance with the interpretation placed by the Court of Chancery on 43 Eliz. c. 4 (c).

Application
of case.

It is understood that this case is under appeal to the House of Lords. But in the meantime it is to be observed, that if the views of Lord Esher, and Lopes, L. J., as to the construction of the Act are supported, it will no longer be possible to lay down a broad distinction between charitable purposes on the one hand, and religious, educational, and parochial purposes on the other. In every case the only question will be whether the creator of the trust aimed in any way at relieving poverty. Still more will this be the result if it should turn out that the view of the construction of the Act adopted by Fry, L. J., is the correct one.

Charitable
purposes
only.

Where the managing committee of a hospital for insane persons, founded by voluntary contributions, made profits by receiving wealthy patients, a portion of which was applied for the benefit of the poorer patients, and the rest in executing necessary repairs of the hospital, it was held that such profits were not "applied to charitable purposes only" within the meaning of the section, and that income tax was therefore payable upon them (d).

Duties on Property of Corporate and Unincorporate Bodies.

Duty on
property of
corporate and
unincorporate
bodies.

There is an exemption from the duty, in lieu of probate and succession duties granted by the Customs and Inland Revenue Act, 1885 (e), on the property of corporate and unincorporate bodies, in the case of property which, or the income or profits whereof, are legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable purpose, or for the promotion of education, literature, science, or the fine arts (f), the property of a friendly society, or savings bank (g), and property acquired by or with funds voluntarily contributed to any body corporate or unincorporate within the preceding thirty years (h).

Institution
of Civil
Engineers.

The property of the Institution of Civil Engineers has been held entitled to the benefit of this exemption, as being applied for the promotion of science (i).

(c) Cf. *Att.-Gen. v. Bagot*, 13 Ir. C. L. Rep. 48, *ante*, p. 359. Under the Stat. of Eliz., poverty in the recipients is not a necessary condition to the validity of a charitable gift. Where the gift is for a general educational, religious, or public purpose, it is charitable, independently of any intention on the part of the donor to relieve poverty. Where, however, the gift is not charitable on any of these grounds, then an intention to relieve poverty or distress is necessary

to constitute it charitable. See *ante*, pp. 3, 11.

(d) *St. Andrew's Hospital, Northampton v. Shearnsmith*, 19 Q. B. D. 624. See also *Needham v. Bowers*, 21 Q. B. D. 436, *ante*, p. 262.

(e) 48 & 49 Vict. c. 51.

(f) Sect. 11, sub-sect. (3).

(g) *Ibid.* sub-sect. (4).

(h) *Ibid.* sub-sect. (6).

(i) *Re Duty on Estate of Institution of Civil Engineers*, 20 Q. B. D. 621.

An institution founded by the leading members of various trades to make provision for sick and infirm members of those trades, the property of which consisted of subscriptions from the members and donations, was not established for a charitable purpose within the meaning of the exemption, but was in the nature of a mutual benefit society (*k*).

Mutual benefit society.

Rates.

It was formerly considered that there was a distinction, as regards rateability to the relief of the poor, where property was not occupied by beneficial owners. It was accordingly held, in many cases, that property occupied for public or charitable purposes was not rateable (*l*); but the decisions were conflicting (*m*).

Old decisions that charity property not rateable to relief of poor.

This is not now the law. The law, as it now stands, rests on the decision of the House of Lords in *Mersey Docks v. Cameron* (*n*). It may be stated thus:

Present law.

Property in the occupation of the Crown, or of persons using it exclusively in and for the service of the Crown, is not rateable. The reason of this is, that the Crown is not mentioned in the Poor Law Acts, and, in the absence of express provision, statutes do not apply to the Crown (*o*).

Crown property.

But this principle does not apply in the case of property dedicated to public or charitable purposes. In the case of such property, therefore, there is no exemption from rateability to the relief of the poor (*p*).

Public or charitable purposes.

It has accordingly been held that property of the University of Edinburgh (*q*), and property held upon trust for charitable purposes, such as hospitals and lunatic asylums (*r*), is rateable.

(*k*) *Re Linen and Woollen Drapers' &c. Institution*, 58 L. T. N. S. 949. See also *Re Duty on Estate of New University Club*, 18 Q. B. D. 720, where the property in question belonged to a members' club.

(*l*) Thus almshouses, *Re v. Waldo*, Cald. 358; hospitals, *Re v. St. Luke's Hospital*, 2 Burr. 1053; *Re v. St. Bartholomew's Hospital*, 4 Burr. 2435; *Re v. St. George the Martyr, Southwark*, 16 L. J. M. C. 129; *Re v. Waldo*, Cald. 358. See *Commissioners of the Leith Harbour and Docks v. Inspector of the Poor*, L. R. 1 H. L. Sc. 17.

(*m*) See *Anon.*, 2 Salk. 527; *Re v. St. Giles, York*, 3 B. & Ad. 673; *Re v. Sterry*, 12 A. & E. 84; *Re v. Wilson*, *ibid.* 94; *Re v. Ellis*, 12 L. J. M. C. 20; *Re v. Baptist Missionary Society*, 18 *ibid.* 194; *Re v. Temple*, 22 *ibid.*

129; *Re v. Parish of Stapleton*, 33 *ibid.* 17; *Loughlin v. Overseers of Saffron Hill*, 12 L. T. N. S. 542; *Re v. Fange*, 3 Q. B. 242; *Re v. Licensed Victuallers' Society*, 1 B. & S. 71.

(*n*) 11 H. L. C. 443.

(*o*) *Mersey Docks v. Cameron*, *supra*; *Greig v. University of Edinburgh*, L. R. 1 H. L. Sc. at p. 350.

(*p*) *Ibid.*; and see *Clyde Navigation Trustees v. Adamson*, 4 Macq. 931; *Commissioners of the Leith Harbour and Docks v. Inspector of the Poor*, L. R. 1 H. L. Sc. 17; *Governors of St. Thomas' Hospital v. Stratton*, L. R. 7 H. L. 477; *Re v. Metropolitan Board of Works*, L. R. 4 Q. B. 15.

(*q*) *Greig v. University of Edinburgh*, L. R. 1 H. L. Sc. 348.

(*r*) *Mersey Docks v. Cameron*, 11 H. L. C. at p. 502; *Governors of St. Thomas'*

So, also, it has been held with regard to property held by the London Missionary Society (*s*), and by the Society of Friends (*t*); and it makes no difference that the whole income is applied to charity (*u*).

Recipients of charity.

Similarly, the recipients of a charity, as almspeople, who are in occupation of the charity estate, are in strictness rateable (*x*).

Schoolmaster.

A schoolmaster in occupation of a part of the charity property is rateable in respect of it (*y*); but not a person employed by a philanthropic society, and having no apartments provided for her except a bedroom (*z*).

Property of no value.

And there is no rateability where the property is of no value (*a*).

Exemption in private Act.

An exemption in a private Act of lands given for charitable purposes "from all public taxes, charges, and assessments whatsoever, civil or military," has been held to include poor-rate (*b*).

No difference between Scotch and English laws.

There is no difference between the law of Scotland and that of England with regard to the rateability of charity property (*c*).

General rates.

Charity property is also liable to general rates (*d*).

Scientific, literary, and fine arts societies.

Societies established exclusively for purposes of science, literature, or the fine arts, are exempted from county, borough, parochial, and other local rates (*e*).

Inhabited house duty.

Hospitals, charity schools, and houses provided for the reception or relief of poor persons, are exempted from inhabited house duty (*f*).

This exemption must be construed in the same manner as the similar exemption in 5 & 6 Vict. c. 35, sect. 61 (*g*). Therefore, an institution which is self-supporting, and receives nothing from charity, even though it may have been originally founded by charitable donations, is not within the exemption (*h*).

Local Act exempting charities from rates.

Where a Local Improvement Act exempted from rates made thereunder any houses or buildings used and occupied exclusively for the purposes of public charity, it was held that an orphanage for children of deceased railway servants, supported partly by

Hospital v. Stratton, L. R. 7 H. L. 477; *Anon.*, 2 Salk. 526; *Reg. v. Ellis*, 12 L. J. M. C. 20; *Reg. v. Parish of Stapleton*, 33 L. J. M. C. 17; *Loughlin v. Overseers of Saffron Hill*, 12 L. T. N. S. 542.

(*s*) *Reg. v. Wilson*, 12 A. & E. 94.

(*t*) *Reg. v. Sterry*, 12 A. & E. 84.

(*u*) *Reg. v. Baptist Missionary Society*, 10 Q. B. 884.

(*x*) *Reg. v. Munday*, 1 East, 584; *Reg. v. Green*, 9 B. & C. 203.

(*y*) *Reg. v. Catt*, 6 T. R. 332; *Reg. v. Parish of Stapleton*, 4 B. & S. 629.

(*z*) *Reg. v. Field*, 5 T. R. 587. See also

Reg. v. Wilson, 12 A. & E. 94

(*a*) *Mayor of Lincoln v. Holmes Common*, L. R. 2 Q. B. 482.

(*b*) *Reg. v. Soot*, 3 T. R. 602.

(*c*) *Clyde Navigation Trustees v. Adamson*, 4 Macq. 931.

(*d*) *Reg. v. Licensed Victuallers' Society*, 1 B. & S. 71.

(*e*) 6 & 7 Vict. c. 36. See *Reg. v. Institution of Civil Engineers*, 5 Q. B. D. 48.

(*f*) 48 Geo. III. c. 55, Sched. B. Exemptions, Case IV.; 14 & 15 Vict. c. 36.

(*g*) *Ante*, p. 361.

(*h*) *Needham v. Bowers*, 21 Q. B. D. 436. See *ante*, p. 362.

subscriptions from railway servants, but mainly by donations, was exempt from rateability (i).

Land Tax.

Colleges and halls of Oxford and Cambridge, the colleges of Windsor, Eton, Winchester, Westminster, and Bromley, the corporation of the governors of the charity for the relief of the poor widows and children of clergymen, and hospitals in England and Wales, are exempted from land tax in respect of their sites (k). Nor is land tax chargeable upon any of the houses or lands which on or before the 25th of March, 1693, belonged to the sites of any college or hall in England or Wales, or to Christ's Hospital, St. Bartholomew, Bridewell, St. Thomas, and Bethlehem Hospitals, or the said corporations for the relief of poor widows and children of clergymen, or the college of Bromley, or any other hospitals or almshouses in England or Wales, in respect of rents or revenues payable to them before the 25th March, 1693, and disbursed for the immediate use of the poor of such hospitals and almshouses (l).

Exemption of colleges, &c.

Tenants holding lands or houses by lease or other grant from the said corporations, or any of the said hospitals or almshouses are not entitled to the benefit of the exemption (m).

And sect. 29 enacts that all such lands, revenues, or rents, belonging to any hospital or almshouse or settled to any charitable or pious use, as were assessed in the fourth year of the reign of William and Mary, should be liable to be charged to land tax, and that no other lands, tenements, or hereditaments, revenues, or rents whatsoever, then belonging to any hospital or almshouse, or settled to any charitable or pious uses as aforesaid, should be charged, taxed, or assessed by virtue of the Act.

The above exemption applies only to institutions and sites existing at the time when the Act was made perpetual (n).

Exemption only extends to institutions then existing.

Land which in the beginning enjoyed the benefit of this exemption retains the exemption, although it has ceased to be held upon charitable uses (o).

Land once exempted continues so.

(i) *Hall v. Derby Sanitary Authority*, 16 Q. B. D. 163.

(k) 38 Geo. III. c. 5, s. 25. Sect. 25 of the original Land Tax Act (4 Will. & M. c. 1) contained similar exemptions.

(l) *Ibid.*

(m) *Ibid.* s. 26.

(n) *Lord Colchester v. Kewney*, L. R. 2 Ex. 253; *Cox v. Rabbits*, 3 App. Cas. 473. The Act was made perpetual by 38 Geo. III. c. 60, passed the 21st of June, 1798.

(o) *Cox v. Rabbits*, *supra*.

Parliamentary and Municipal Franchise.

Inmates of hospitals, &c., when entitled to be registered.

Freehold interest.

Right to receive pecuniary allowance for life.

Inmates removeable at pleasure.

Receipt of parochial relief, &c.

Questions have sometimes arisen as to whether the inmates of hospitals and almshouses have a freehold interest sufficient to entitle them to be placed upon the register of voters.

Where the inmates are appointed for life, and have a freehold interest in the rooms or houses which they occupy, they are entitled to be registered (*p*).

If, on the other hand, the estates are vested in a body of governors or trustees, and the inmates have no interest in any particular building or portion of a building, but may be shifted from room to room, and all they are entitled to is to receive certain money payments out of the charity funds, then, although they may be appointed to enjoy the benefit of the charity for life, they have no such interest as will entitle them to be registered (*q*).

Still less, of course, where the inmates are not appointed for life, but are removeable at pleasure (*r*).

The receipt of parochial relief or other alms is a disqualification for the parliamentary franchise (*s*).

But relief by vaccination (*t*) or from School Board fees (*u*), or in the case of the metropolis by admission into a hospital on the ground of infectious diseases (*x*), is not a disqualification.

The receipt of union or parochial relief, or other alms, is a disqualification for the municipal franchise (*y*).

(*p*) *Simpson v. Wilkinson*, 7 M. & Gr. 60; *Roberts v. Percival*, 18 C. B. N. S. 36; *Fryer v. Bodenham*, L. R. 4 C. P. 529.

(*q*) *Freeman v. Gainsford*, 31 L. J. C. P. 33; *Heartley v. Banks*, 6 C. B. N. S. 40; *Steele v. Bosworth*, 18 C. B. N. S. 22; *Simsey v. Marshall*, L. R. 8 C. P. 269. See also *Ashmore v. Lees*, 2

C. B. 31.

(*r*) *Davis v. Waddington*, 7 M. & Gr. 37.

(*s*) 2 & 3 Will. IV. c. 45, s. 36.

(*t*) 30 & 31 Vict. c. 84, s. 26.

(*u*) 39 & 40 Vict. c. 79, s. 10.

(*x*) 46 & 47 Vict. c. 35, s. 7.

(*y*) Municipal Corporations Act, 1882, s. 9.

PART II.

MORTMAIN AND CHARITABLE USES ACT, 1888.

INTRODUCTION.

Mortmain.

“ALIENATION in mortmain, in *mortuâ manu*, is an alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal” (a). Meaning of mortmain.

With regard to the origin of the term “mortmain,” Lord Coke (b), after mentioning the conjectures of others, said that the true cause and meaning of the name was taken from the effects, as it is expressed in the statute (c) itself, that the services that were due out of such fees, and which, in the beginning, were created for the defence of the realm, were unduly withdrawn, and the chief lords lost their escheats, wardships, relief, and the like; so that the lands were said to come to dead hands as to the lords, for a dead hand yieldeth no service. Origin of term.

In England (d) the early Mortmain Statutes were designed to check the accumulation of land in the hands of the great religious or ecclesiastical corporations. The result of these accumulations was, that the lords were deprived of the incidents of tenure, and the benefit of escheats. The preamble to the Statute *De Viris Religiosis* (e) recited, that religious men had wrongfully entered into fees without licence and will of the chief lord, of whom they Reason for passing mortmain statutes.

(a) 2 Bl. Com. 268.

(b) Co. Lit. 2 b.

(c) 7 Edw. I.

(d) Prohibitions upon alienation in mortmain are not peculiar to English law. The same thing was more than once attempted by Roman legislators. See *Att.-Gen. v. Day*, 1 Ves. Sen. at p. 223. Frederick Barbarossa enacted

that no fief should be transferred either to the church, or otherwise, without the permission of the superior lord. And in France Louis IX. enacted a similar provision. See Shelf. Mortm. p. 2; Hallam's Middle Ages, Vol. II. Ch. VII.

(e) 7 Edw. I., *infra*.

were held, "whereby the services that are due of such fees, and which, at the beginning, were provided for the defence of the realm, are wrongfully withdrawn, and the chief lords do lose their escheats of the same."

Policy of law.

The policy upon which restrictions on the alienation of land in mortmain are founded is the same as that which finds expression in the rule against perpetuities, the policy, that is, of removing as far as possible all checks to the free circulation of property.

Magna Charta.

The earliest enactment of the kind now in question was contained in Magna Charta (*f*). It was directed solely against religious houses, and corporations sole were not affected by it (*g*). It was provided, by that Statute, "that it shall not be lawful from henceforth to any to give his lands to any religious house, and to take the same land again to hold of the same house. Nor shall it be lawful to any house of religion to take the lands of any, and to have the same to him of whom he received it. If any from henceforth give his land to any religious house, and thereupon be convict, the gift shall be utterly void, and the land shall accrue to the lord of the fee."

Stat. De Viris Religiosis.

This was followed in the reign of Edward I. by the enactment known as the Statute *De Viris Religiosis* (*h*). That Statute extended not only to ecclesiastical corporations aggregate, but it also expressly included bishops, parsons, and other ecclesiastical corporations sole (*i*).

The preamble recited, that it had been provided that religious men should not enter into the fees of any without licence and will of the chief lord, and that they had entered into the same accordingly, sometimes having bought them, sometimes having received them as presents, whereby the services due for such fees were wrongfully withdrawn and the chief lords lost their escheats. The statute then proceeded to ordain that no person, religious or other, should buy or sell or receive of any man, by gift, lease, or otherwise, or appropriate to himself, any lands or tenements whereby the same might come into mortmain on pain of forfeiture. In such case the king and other immediate chief lord of the fee might enter upon the land so aliened within a year after the alienation and hold it in fee and inheritance. And if the immediate chief lord did not enter within the year, the next chief lord

(*f*) 9 Hen. III. c. 36, re-enacted by 25 Edw. I. See 2 Inst. 75; Wilm. Notes, p. 9.

(*g*) 2 Inst. 75.

(*h*) 7 Edw. I.; repealed and re-enacted by the Mortm. and Charit. Uses Act, 1888.

(*i*) Co. Lit. 2 b.

immediate might enter within the next half year; and similarly the next immediate lord. And if all the chief lords of the fees, being of full age, within the four seas and out of prison, should neglect to enter, the king, immediately after the year accomplished from the time that the purchases, gifts, or appropriations were made, should take such lands and tenements into his hand and infeoff other therein by certain services to be done to him for the defence of the realm, saving to the chief lords of the same fees their wards and escheats and other services due and accustomed.

The same reign produced two other Statutes (*k*), both aimed at practices which had been adopted for the purpose of evading the Statute *De Viris*. The first of these enacted that lands acquired in mortmain by means of collusive judgments (*l*) should be forfeited. The second was directed against the practice of setting up crosses on lands with the object of obtaining the benefit of special privileges enjoyed by the Knights Templars and Hospitallers.

The Statute of *Quia Emptores* (*m*), which enabled every free man to sell his lands and tenements, or part of them, contained the following provision against alienation in mortmain: "And it is to be understood, that by the said sales or purchases of lands or tenements, or any parcels of them, such lands or tenements shall in no wise come into mortmain, either in part or in whole, neither by policy nor craft, contrary to the form of the statute made thereupon of late" (*n*).

The next Statute was 15 Ric. II. c. 5 (*o*), which was explanatory of the Statute *De Viris*. Among other things, it declared that purchases to the use of spiritual persons, by means of which they were enabled to enjoy the profits of the land, were within the mortmain provisions.

It contained, however, one provision which requires more particular notice. The earlier Mortmain Statutes had been directed solely against ecclesiastical or religious corporations. The Statute 15 Ric. II. c. 5, for the first time extended these provisions to civil corporations. It enacted that the same Statute (*p*) should extend and be observed of lands, tenements, fees, advowsons, and other possessions purchased or to be purchased to the use of guilds or

(*k*) Statute of Westminster the Second, 13 Edw. I. co. 32, 33. 13 Edw. I. c. 32 is repealed by, and its provisions incorporated in the Mortm. and Charit. Uses Act, 1888, *post*. 13 Edw. I. c. 33 was repealed by 19 & 20 Vict. c. 64.

(*l*) The processes afterwards known as common recoveries. As to this, see

2 Inst. 429; *Wimbish v. Tailbois*, Plowd. at p. 43.

(*m*) 18 Edw. I. st. 3.

(*n*) The Statute *De Viris*, *supra*.

(*o*) Repealed, but not expressly reproduced by the Mortm. and Charit. Uses Act, 1888.

(*p*) The Statute *De Viris*.

13 Edw. I. c. 32.

13 Edw. I. c. 33.

18 Edw. I. c. 3.

15 Ric. II. c. 5.

Civil corporations.

fraternities; and "because mayors, bailiffs, and commons of cities, boroughs, and other towns which have a perpetual commonalty, and others which have offices perpetual, be as perpetual as people of religion, that from henceforth they shall not purchase to them, and to their commons or office, upon pain contained in the said Statute *De Religiosis*; and whereas others be possessed or hereafter shall purchase to their use, and they thereof take the profits, it shall be done in like manner as is aforesaid of people of religion."

15 Ric. II.
c. 6.

The next chapter of the same Statute was directed against the appropriation of benefices by religious houses, and provided that in every licence for the future to be made in Chancery for the appropriation of any parish church, a convenient sum of money should be ordained to be paid and distributed yearly of the fruits and profits of the same church by those to whom the appropriation was made and their successors to the poor parishioners of such church; and that the vicar should be well and sufficiently endowed (*q*).

23 Hen. VIII.
c. 10.

The next Statute which requires notice is 23 Hen. VIII. c. 10 (*r*), the earliest enactment relating to superstitious uses. By that Act all assurances and trusts of land to the use of parish churches, chapels, churchwardens, guilds, fraternities, commonalties, companies, or brotherhoods, erected and made of devotion, or by common assent of the people, without any corporation, or to uses to have obits perpetual, or a continual service of a priest for ever, or for sixty or eighty years, were declared to be within the mischief of alienations in mortmain, and to be utterly void as to such gifts made for any time exceeding twenty years from the creation of such uses (*s*).

Alienations
in mortmain
voidable, not
void.

Under the above-mentioned Statutes the effect of an alienation in mortmain was to give the mesne lords and the king certain rights of entry. But until that right was exercised the land remained in the corporation. The incapacity of the corporation was not to take the land, but to retain it against the lord or the Crown choosing to re-enter. In other words, the alienation was voidable, not void.

Licences in
mortmain.

It followed from the fact that the mesne lords and the king were not bound to exercise their rights of entry, that such rights might be waived. Hence arose licences in mortmain.

(*q*) See also 4 Hen. IV. c. 12. An appropriation of an advowson by an abbot or bishop to himself and his successors was an alienation in mortmain, and could not be made without the king's licence. See *post*, p. 382.

(*r*) Repealed and not expressly re-enacted by the Mortm. and Charit. Uses

Act, 1888, its provisions having been superseded by 9 Geo. II. c. 36.

(*s*) The Act contained an exemption of cities and towns corporate having by ancient custom power to devise in mortmain. See *Porter's Case*, 1 Rep. 22 b.

Prior to the Statute *De Viris Religiosis* (t), it appears that an alienation in mortmain was lawful if made with the licence of the immediate lord, whether the king or not. But that Statute provided for entry on the forfeited lands by the king if the mesne lords neglected to enter (u). It would seem, therefore, that from that date a licence in mortmain could only have been granted by all the lords who might be entitled to take advantage of the forfeiture, including the king (v).

By 27 Edw. I., a mode of obtaining a licence in mortmain was provided by means of a writ issuing out of Chancery, to inquire according to the points accustomed in such things; and by a later Statute it was enacted that where there were mesne lords nothing should be done under the last-mentioned statute, unless the assent of such lords could be shown (x).

The writ *ad quod damnum* issued where it was desired to alienate land in mortmain, and where, consequently, it was necessary to obtain the licence of the king and of two chief lords. Under this writ an inquiry was held whether the proposed alienation would be injurious to the king or others, and if the finding was in favour of the alienation, letters patent of licence from the king and intermediate lords were granted (y). This practice was afterwards superseded by obtaining the king's licence, with a clause dispensing with the writ *ad quod damnum*. And it seems that a licence was considered good even without such dispensation (z).

By the Bill of Rights (a), the power claimed by the Crown of dispensing with laws by virtue of the royal prerogative was declared illegal. It therefore became necessary to make express provision for the granting of licences in mortmain. This was done by 7 & 8 Will. III. c. 37 (b).

That Act, after reciting that it would be a great hindrance to learning and other good and charitable works if persons well inclined might not be permitted to found colleges or schools for the encouragement of learning, or to augment the revenues of colleges or schools already founded, by granting lands, tenements, rents, or other hereditaments to such colleges or schools, or to grant lands or

(t) 7 Edw. I.

(u) See *ante*, pp. 372, 373.

(v) See Shelf. Mortm. p. 35.

(x) 34 Edw. I. st. 3. See also 18 Edw. III. st. 3, c. 3 (repealed by and incorporated in the Mortm. and Charit. Uses Act, 1888, *post*), where the power of the Crown to grant licences in mortmain was recognized. See also 21 Ric. II. c. 15; 25 Ric. II. c. 5; 2 Hen. IV. c. 13.

(y) Fitz. N. B. 221, O.—226, where cases in which a licence was necessary are stated.

(z) Co. Lit. 99 a. See Shelf. Mortm. 37, 38.

(a) 1 Will. & M. sess. 2, c. 2.

(b) Extended to Ireland by 32 Geo. III. c. 31; 7 & 8 Will. III. c. 37 is repealed, and its provisions re-enacted by the Mortm. and Charit. Uses Act, 1888, *post*.

Early history.

Writ *ad quod damnum*.

Power of Crown to dispense with laws, illegal.

7 & 8 Will. III. c. 37.

other hereditaments to other bodies politic or incorporate, then in being or thereafter to be incorporated for other good and public uses, empowered (c) the king to grant to any person or persons, bodies politic or corporate, licence to alien in mortmain, and also to purchase, acquire, and take and hold in mortmain, in perpetuity or otherwise, any lands, tenements, rents, or hereditaments whatsoever, of whomsoever the same should be holden. And it was declared (d) that lands, tenements, rents, or hereditaments so aliened or acquired and licensed, should not be subject to any forfeiture for or by reason of such alienation or acquisition.

Licence in mortmain under 7 & 8 Will. III. c. 37.

Under 7 & 8 Will. III. c. 37, the licence granted by the king operated to prevent a forfeiture to other lords, as well as to the king himself; nor was a writ of *ad quod damnum*, or any other inquiry as to whether any injury would be caused by the granting of the licence, necessary, before the licence could be granted (e).

Mortm. and Charit. Uses Act, 1888.

The law of mortmain is now comprised in Part I. of the Mortmain and Charitable Uses Act, 1888. This part of the Act includes sects. 1, 2 and 3. Sects. 1 and 3 reproduce the Statute *De Viris Religiosis* (f), and are substituted also for 13 Edw. I. c. 32 (g), and 15 Rich. II. c. 5 (h). Sect. 2 re-enacts 7 & 8 Will. III. c. 37 (i), and also takes the place of the older Statute, 18 Edw. III. st. 3, c. 3 (k).

Sect. 13 repeals all, or almost all, the old mortmain statutes.

Exemptions.

A great number of exemptions from the mortmain provisions had from time to time been created by statutes, charters, and licences. These are preserved by sects. 6, 8 and 12 of the new enactment (l).

Charitable Uses.

Encouragement to charitable gifts by 43 Eliz. c. 4.

In the reign of Queen Elizabeth great encouragement was given to the establishment of charitable foundations and to the promotion of charitable purposes. The Statute 43 Eliz. c. 4, has already been referred to (m). It authorized the Court of Chancery to issue certain commissions to inquire in respect of charitable uses and trusts. The Commissioners were empowered to proceed by summoning a jury of the county in which the property in question was situated, for the purpose of inquiring whether there had been

(c) Sect. 1.

(d) Sect. 2.

(e) Shelf. Mortm. p. 40.

(f) 7 Edw. I., ante, p. 372.

(g) Ante, p. 373.

(h) Ibid.

(i) Supra.

(k) Ante, p. 375, n. (z).

(l) See notes to those sections.

(m) Ante, pp. 1, 2. See per Fry, L. J., in *Reg. v. Commissioners of Income Tax*, 22 Q. B. D. at pp. 310, 311. The Act is repealed by the Mortm. and Charit. Uses Act, 1888.

any abuse or misapplication, or mistaken application, of the funds belonging to charities.

The subject-matter on which the Commissioners to be appointed under the statute were to have jurisdiction was "lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stocks of money, heretofore given, limited, appointed, or assigned, or which hereafter shall be given, limited, appointed, or assigned, to or for any the charitable and godly uses before rehearsed" (n).

A most liberal construction was put on this Statute by the Courts, it being supposed that the legislature intended thereby to cure all defects and omissions in point of form in instruments by which property was given to charitable purposes. Thus, a devise or settlement by a tenant in tail of land to charitable purposes without levying a fine or suffering a recovery, was held good as an appointment both against the issue in tail and the remainderman (o). A remainder limited to a charity was held good, although there was no particular estate to support it (p). Again, devises of land to charitable purposes were looked upon as appointments or declarations of trust, and were valid even when made to corporations, although corporations were excepted out of the old Statute of Wills (q), even where the corporation was misnamed (r). A devise of copyholds (except when there was a prior devise to individuals in tail (s)) was good as an appointment, although there had been no surrender to the uses of the will (t). A devise of copyholds by will, though unattested, was valid, as they passed by surrender, and the will operated as an appointment (u); but a devise of freeholds by a will not attested by three witnesses, as required by the Statute of Frauds, was void (x), as was also a devise of customary freeholds, where there was no custom to surrender to the use of a will and no surrender (y).

Liberal construction.

It was admitted in *Collison's Case* (z) that the Statute of Elizabeth did not enable a person under disability, such as an infant,

(n) *I. e.* in the preamble to the Statute, see ante, pp. 1, 2.

(o) *Att.-Gen. v. Rye*, 2 Vern. 453; *Tay v. Slaughter*, Pr. Ch. 16; *Att.-Gen. v. Burdet*, 2 Vern. 755.

(p) *Plate v. St. John's College, Cambridge*, Duke, ed. by Bridg. 379.

(q) 34 & 35 Hen. VIII. c. 5. See *Flood's Case*, Hob. 136; *Collison's Case*, *ibid.*; *Rez v. Newman*, 1 Lev. 284; *Mayor of Bristol v. Whitton*, Duke, ed. by Bridg. 377.

(r) *Anon.*, 1 Ch. Ca. 267.

(s) *Att.-Gen. v. Lady Downing*, Amb.

at p. 573.

(t) *Chard v. Opie*, Rep. t. Finch, 75; *Att.-Gen. v. Barnes*, 2 Vern. 597; *Tuffnell v. Page*, 2 Atk. 37; *Att.-Gen. v. Andrews*, 1 Ves. Sen. 225.

(u) *Att.-Gen. v. Barnes*, *supra*.

(x) *Ibid.*, and see *Att.-Gen. v. Bains*, Pr. Ch. 270; *Jenner v. Harper*, Pr. Ch. 389; *Wagstaff v. Wagstaff*, 2 P. Wms. 258; *Addington v. Cann*, 3 Atk. 141.

(y) *Hussey v. Grills*, Amb. 299—301.

(z) Hob. 136. And see *Bramble v. Haivering Poor*, Duke, ed. by Bridg. 508.

lunatic, or the like, to limit or appoint land to charitable uses. But where a *feme covert*, who had administered to her former husband, bequeathed part of her assets to a charity, it was held that the will, though void at law, was good as a declaration of trust (*a*).

Other similar
Statutes be-
fore 9 Geo. II.
c. 36.

Other Acts of a similar character to the Statute of Elizabeth were passed which may be briefly alluded to. They are 7 Jac. I. c. 3, intituled "An Act for the continuing and better maintenance of husbandry and other manual occupations by the true employment of moneys given and to be given for the binding out of apprentices" (*b*); certain Acts for the augmentation of churches and chapels (*c*), and Acts by which gifts of lands were authorized to be made to Queen Anne's Bounty (*d*), and enabling land to a limited extent to be acquired by churchwardens and overseers for the benefit of the poor (*e*).

9 Geo. II.
c. 36.

The loose construction placed upon the Statute of Elizabeth gave rise to so much litigation and so many abuses, that the legislature, in the year 1736, considered it necessary to limit and regulate the power of making assurances to charitable uses.

This was effected by 9 Geo. II. c. 36 (*f*).

The effect of that Act was to place certain restrictions on the way in which lands, and money, stock, or other personal estate to be laid out in the purchase of land, might be assured for charitable purposes.

Amending
Acts.

The Act was amended by various Statutes. These were 9 Geo. IV. c. 85, an Act explanatory of sect. 2 of 9 Geo. II. c. 36; 24 & 25 Vict. c. 9; 25 & 26 Vict. c. 17; 27 & 28 Vict. c. 13; 29 & 30 Vict. c. 57 (*g*); and sect. 13 of 35 & 36 Vict. c. 24 (*h*).

Exemptions.

A number of Acts have from time to time been passed creating exemptions from 9 Geo. II. c. 36. These are preserved by sects. 6, 7, and 8 of the Mortmain and Charitable Uses Act, 1888 (*i*).

Repeal.

The Act 9 Geo. II. c. 36, and the amending Acts, are repealed

(*a*) *Damus' Case*, Moo. 822.

(*b*) Repealed by the Stat. Law Rev. Act, 1863. And see 8 Anne, c. 9; *Res v. Clifton-upon-Dunsmore*, Burr. S. C. 697.

(*c*) 17 Car. II. c. 3, s. 7, and 6 & 7 Vict. c. 37, s. 25; 29 Car. II. c. 8; and see *Att.-Gen. v. Brereton*, 2 Ves. Sen. at p. 426.

(*d*) 2 & 3 Anne, c. 20; 6 Anne, c. 24; 6 Anne, c. 54; 1 Geo. I. st. 2, c. 10.

(*e*) 14 Car. II. c. 12; 9 Geo. I. c. 7.

(*f*) See *post*, pp. 388, 389.

(*g*) The effect of these various statutes is stated in the notes to sects. 4 and 5 of the Mortm. and Charit. Uses Act, 1888, *post*.

(*h*) Charit. Trustees Incorporation Act, 1872, *post*.

(*i*) See the notes to those sections, *post*.

by the Mortmain and Charitable Uses Act, 1888 (*j*), and are re-enacted in a consolidated form by Part II. of that Act (*k*).

The Mortmain and Charitable Uses Act is divided into four parts. The first part, which deals with the subject of mortmain, has already been mentioned. Mortm. and Charit. Uses Act, 1888.

Part II., which relates to charitable uses, comprises sections 4 and 5. Part II.

Sect. 4 incorporates the provisions of sects. 1, 2, and 3 of 9 Geo. II. c. 36; 9 Geo. IV. c. 85; sects. 1—5 of 24 & 25 Vict. c. 9; and sect. 4 of 27 & 28 Vict. c. 13. Sect. 5 takes the place of 25 & 26 Vict. c. 17 (except sect. 2); 27 & 28 Vict. c. 13 (except sect. 4); 29 & 30 Vict. c. 57; and sect. 13 of 35 & 36 Vict. c. 24 (*l*).

Part III. of the Act, consisting of sects. 6, 7, and 8, deals with exemptions. Sect. 6 reproduces the exemptions in the case of public parks, elementary schools, and museums provided by 34 & 35 Vict. c. 13, which is now repealed (*m*). Sect. 7, sub-sect. (i), contains exemptions in favour of certain universities and colleges. It incorporates the exemption in the case of Oxford and Cambridge and the colleges of Eton, Winchester, and Westminster, previously contained in 9 Geo. II. c. 36, s. 4, and 24 & 25 Vict. c. 9, s. 6. And it adds to them exemptions in favour of the London, Durham, and Victoria Universities and Keble College. These are new, and were added during the passage of the Bill through Parliament. Sect. 7, sub-sect. (ii), incorporates the exemptions in the case of assurances for religious and educational purposes, &c., provided by 31 & 32 Vict. c. 44, which is repealed (*n*). Part III.

Sect. 8 relates generally to exemptions created by various Statutes, and applies them to the corresponding provisions of the new Act.

Part IV. of the Act contains various supplemental provisions, including definitions of "assurance," "land," and "full and valuable consideration," a provision adapting the Act to the system of land registration, and a general saving in favour of existing charters, licences, and customs. Part IV.

Sect. 13, sub-sect. 1, is the repealing clause. Sub-sect. 2 of the same section reproduces the preamble to the Statute of Elizabeth, and enacts, that references in enactments and documents to charities within the meaning, purview, and interpretation of that Statute,

(*j*) Sect. 13, *post*.

(*k*) Sects. 4 and 5, *post*.

(*l*) Repealed by sect. 13 of the Act, *post*.

(*m*) Sect. 13, *post*.

(*n*) *Ibid*.

shall be construed as references to charities within the meaning, purview, and interpretation of such preamble.

The Act does not extend to Scotland or Ireland (o).

Effect of Act. The Mortmain and Charitable Uses Act, 1888, is a consolidating Act. In the notes to the various sections, the question whether any alteration in the law has been effected is dealt with. It may, however, be stated generally that, with the exception of one or two points of detail, the Act leaves the law as it was previously.

(o) Sect. 11.

MORTMAIN AND CHARITABLE USES ACT, 1888.

51 & 52 VICT. c. 42.

*An Act to consolidate and amend the Law relating to Mortmain
and to the disposition of Land for Charitable Uses.*

[13th August 1888.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.—MORTMAIN.

1.—(1.) Land (*b*) shall not be assured (*b*) to or for the benefit of, or acquired by or on behalf of, any corporation in mortmain (*c*), otherwise than under the authority of a licence (*d*) from her Majesty the Queen, or of a statute for the time being in force (*e*), and if any land is so assured otherwise than as aforesaid the land shall be forfeited to her Majesty from the date of the assurance (*b*), and her Majesty may enter on and hold the land accordingly (*f*):

Forfeiture
on unlawful
assurance or
acquisition in
mortmain (*e*).

(2.) Provided as follows :

- (i.) If the land (*b*) is held directly of a mesne lord under her Majesty, that mesne lord may enter on and hold the land at any time within twelve months from the date of the assurance (*g*):
- (ii.) If the land is held of more than one mesne lord in gradation under her Majesty, the superior of those mesne lords may enter on and hold the land at any time within six months after the

Sect. 1

time at which the right of the inferior lord to enter on the land expires :

(iii.) If a mesne lord is at the time when his right of entry accrues under this Act a lunatic or otherwise under incapacity, his right of entry may be exercised by his guardian or the committee of his estate, or by such person as her Majesty's High Court of Justice may appoint in that behalf :

(iv.) If the right of entry under this Act is exercised by or on behalf of a mesne lord, the land shall be forfeited to that lord from the date of the assurance instead of to her Majesty.

Former enactments.

(a) This section, together with sect. 3, re-enacts the Statute *De Viris Religiosis*, 7 Edw. I., passed in the year 1279, and repealed by sect. 13 of the present Act. The provisions of this Statute will be found *ante*, pp. 372, 373.

Alienation in mortmain voidable, not void.

The repealed Statute rendered alienations in mortmain voidable, not void. Lands so alienated became forfeited to the Crown or to a mesne lord ; but if neither the Crown nor a mesne lord chose to exercise the right of entering for the escheat, then the corporation might hold the land by virtue of its common law capacity so to do, and might sue and be sued in respect thereof : Co. Lit. 2 b ; *ante*, p. 374.

The language of sub-sect. (1) of the present section is perhaps somewhat stronger than that of the Stat. *De Viris*, but its effect seems to be the same.

(b) Defined by sect. 10 of this Act, *post*.

Act applies to corporations sole as well as aggregate.

(c) This enactment applies to all corporations, whether aggregate or sole, ecclesiastical or lay. Thus an alienation to a parson and his successors, by which they take in right of the church, is an alienation in mortmain : Bro. Abr. Mortm. pl. 3 ; Vin. Abr. Mortm. (B) pl. 6 ; and see *Cope v. Bedford*, Palm. 426. Similarly, a release of his seignory by a lord to an abbot who was his tenant was held to be mortmain : Fitz. N. B. 223 (I). So, also, an alienation by one abbot to another (Vin. Abr. Mortm. (B) pl. 2), an appropriation of an advowson of which an abbot or bishop was seised in fee to him and his successors (Fitz. N. B. 223 (H) ; *Priddle and Napper's Case*, 11 Co. 11 a), a grant by a tenant of lands out of which a rent in fee issued of a right to distrain for the rent on other lands (Fitz. N. B. 224 (G)).

The Act extends to lands given to bodies politic as well as to those purchased by them : Fitz. N. B. 224 (F) ; *Appeal of Lord Derwentwater*, 9 Mod. at p. 177 ; *Roper v. Radcliffe*, *ibid.* at p. 202.

Leases.

It has been held that a lease for a long term, as 100 or 200 years, is within the Mortmain Statutes, but not a lease for twenty, forty, or even ninety-nine years : 3 Edw. IV. fol. 13, 14 ; *Abbot of Boveley's Case*, 4 Hen. VI. fol. 9, pl. 1 ; Bro. Abr. Mortm. pl. 27, 39 ; Vin. Abr. Mortm. (B) pl. 21 ; *Cotton's Case*, Godb. 192 ; *Hemming v. Brabason*, Sir O. Bridgm. at p. 7. It was considered, however, in *Vigers v. Dean, &c. of St. Paul's*, 18 L. J. Q. B. 97,

that the Statutes of Mortmain only forbade a corporation to hold that which was in itself perpetual; and if this be so, the grant of a lease cannot be mortmain unless it is for a term which may be considered to be equivalent to an absolute alienation.

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(c)–(g).

In *Jesus Coll. v. Gibbs*, 1 Y. & C. Ex. 145, it seems to have been admitted that a common agricultural lease was not within the statutes. So, also, it would seem that a covenant for renewal contained in a lease would not bring it within them: Bro. Abr. Mortm. pl. 39; Vin. Abr. Mortm. (B) pl. 22.

A grant of a rent-charge to an abbot and his successors for eighty years was held to be mortmain: *Abbot of Boxeley's Case*, 4 Hen. VI. fol. 9, pl. 1; Bro. Abr. Mortm. pl. 15; Vin. Abr. (B) pl. 14. It was considered equivalent to a term for life, and therefore a freehold, and it was said that, as there could not be an entry into a rent-charge, the Crown should have it: per Paston, J., 19 Hen. VI. fol. 63 (A). **Rent-charge.**

Goods and chattels are not within the Act, nor is an annuity which (unlike a rent-charge) charges the person only: Co. Lit. 2 b; Vin. Abr. Mortm. (B) pl. 17; 2 Bl. Com. 40. See *Priddy v. Rose*, 3 Mer. 86; *Countess of Holderness v. Lord Carmarthen*, 1 Bro. C. C. 377; *Earl of Stafford v. Buckley*, 2 Ves. Sen. 171; *Aubin v. Daly*, 4 B. & Al. 59. **Goods and annuities.**

Numerous exemptions have been created by various Acts to the mortmain provisions. These are preserved by sects. 6 and 8 of the present Act, and such of them as are not expressly mentioned in the Act will be found in n. (a) to sect. 8, *post*, pp. 429 *et seq.* **Exemptions.**

A condition in a grant or devise that the grantee or devisee should alien in mortmain is void, and the grantee or devisee takes an absolute estate: *Doe v. Aldridge*, 4 T. R. 264; *Doe v. Wright*, 2 B. & A. 710. A condition against alienation in mortmain is valid: Grant on Corporations, p. 104. **Condition to alien in mortmain.**

(d) See sect. 2 of this Act, *post*.

(e) See sects. 6 and 8 of this Act, *post*, and n. (a) to sect. 8.

(f) Where lands are granted to a corporation in remainder after a life estate, the forfeiture does not take place until the death of the tenant for life: Vin. Abr. Mortm. (B) pl. 19, (C) 3, pl. 6; and the case is the same where a remainderman aliens to a corporation: *Ibid.* (C) 3, pl. 4. **Grant in remainder.**

Under the old Mortmain Statutes, it was held that the Crown could not enter upon lands aliened in mortmain before office found: *Doe v. Redfern*, 12 East, 96; *Doe v. Evans*, 5 B. & C. 587, note (c). The inquiry whether lands have been aliened in mortmain is directed by commission under the great seal, addressed to special commissioners, who are empowered to summon and examine witnesses, and to take an inquisition with a jury, formerly returnable into the Court of Chancery: see Shelf. Mortm. pp. 10, 11, where an instance of such an inquisition is cited in note (e). Leave to traverse the inquisition was formerly obtained by petition to the Court of Chancery: *Ex parte Webster*, 6 Ves. 809. As to the right of a subject to traverse an inquisition finding property to be in the Crown, see Com. Dig. Prerog. (D) 83, 84; *Ex parte Lord Gwydir*, 4 Madd. 281. Whether a mere trustee has that right is doubtful: *Re Sadler*, 1 Madd. 581. **Crown could not enter till office found.**

(g) The cases in which land escheats to the mesne lord in right of his seignory instead of to the Crown are very rare, owing to the necessity of proof that the land had originally been granted to the tenant's predecessors in title prior to the passing of the Statute of *Quia Emptores*, 18 Edw. I. c. 1, since which time it has been unlawful to create a tenure in fee simple. The **Escheat to mesne lord.**

Sect. 1
(g).

Alienation in mortmain gives mere right of entry.

only exception to this rule are the few seigniories which may have been subsequently granted by the king's tenants *in capite*: see Wms. R. P. 14th ed. p. 131.

Advowson.

Alienation in mortmain does not give a right of action at law either to the Crown or to a mesne lord; for that which passes by the alienation is a title merely, or right to enter: Co. Lit. 345b; Vin. Abr. Right, 231, pl. 7. The forfeiture does not vest the estate in the lord without some act on his part; his title can only be asserted by means of some act: *Doe v. Evans*, 5 B. & C. 584, 587, n. But nothing more than entry is required.

In the case of an alienation in mortmain of an advowson, the only mode of entry is by presentation: Vin. Abr. Presentation, 422, pl. 11; *ibid.* 423, pl. 4, Marg.; *ibid.* 427 (B d 3), pl. 3, 483 (N d), pl. 2. If the lord, therefore, presents at any time within the year, though the living has been full for six months, it is sufficient to give him a title which must be perfected by *quare impedit* to be brought within the year: Vin. Abr. Presentation, 338, pl. 23; *ibid.* 392, pl. 3.

Seignory limited for particular estates.

Where the seignory was limited for particular estates, the lord in remainder was bound by the laches of the particular tenant in not entering within the year: Vin. Abr. Mortm. (C) 3, pl. 1, 2.

Twelve months, how computed.

The twelve months is computed from the day after the alienation: Vin. Abr. Mortm. (C) 3, pl. 5. See, however, the previous note.

Power to her Majesty to grant licences in mortmain (a).

2. It shall be lawful for her Majesty the Queen, if and when and in such form as she thinks fit, to grant to any person or corporation a licence to assure in mortmain land (b) in perpetuity or otherwise, and to grant to any corporation a licence to acquire land in mortmain and to hold the land in perpetuity or otherwise.

Former enactments.

(a) This section re-enacts, without material modification, sect. 1 of 7 & 8 Will. III. c. 37. Sect. 2 went on to provide that lands, tenements, rents, or hereditaments so aliened or acquired should not be subject to forfeiture by reason thereof. The Act is repealed by sect. 13 of the present Act, *post*; as to its provisions, and, generally, as to the old law relating to the granting of licences in mortmain, see *ante*, pp. 374—376. As to what is sufficient to amount to a licence in mortmain, see *Att.-Gen. v. Flood*, Hayes & J. App. xxi, xxxiii.

Licence in mortmain.

A licence to alien in mortmain may be given for several purchases, and does not determine by the death of the sovereign who grants it: Co. Lit. 52 b; Fitz. N. B. 223 (G); *Wroth's Case*, 2 Plowd. at p. 457; and see Shelf. Mortm. p. 40.

Conveyance must satisfy Part II. of this Act.

In conveying land in pursuance of the licence, the formalities prescribed by Part II. of the present Act, now substituted for 9 Geo. II. c. 36, must (where applicable) be observed: *Mogg v. Hodges*, 2 Ves. Sen. 53.

Licence must be strictly followed.

The licence must be strictly followed. Thus, if the licence is to a man to alien his manor of Dale, he cannot alien the manor, less twelve acres: *Rex v. Newton*, J. Bridg. at p. 114. So, if the licence is to alien two parts of the manor, he cannot alien the whole: *Pexhall's Case*, 8 Co. 85 a. Or if the licence is to

alien a third of his lands, an alienation of the whole is invalid: *Rex v. Allen*, **Sect. 2**
supra. (a), (b).

The licence is not assignable, but it may be countermanded or revoked at any time before execution: *Anon.*, Dyer, 92 a; *Web and Paternoster*, Palm. at How far
p. 74; 2 Rol. R. 152. revocable.

A licence to purchase lands and tenements authorizes a purchase of advow- Advowsons.
sons: Vin. Abr. Alienation (B), 279, pl. 2; *London v. Collegiate Church of Southwell*, Hob. 303, 304. The same is the case with a licence to purchase hereditaments: *Anon.*, Dyer, 323 a; and see *Whistler's Case*, 10 Co. 65 b.

The licence is usually granted by writ of privy seal or letters patent. The Grant of
latter appears to be the more regular course. It frequently empowers all licence.
subjects, whether incorporated or not, to alien to the licensee within the limits of the licence: Grant on Corporations, p. 102.

A licence in mortmain usually specifies the amount in value of land which may be held under it; and if it is desired to acquire more land after that amount has been reached, a further licence must be obtained. For this purpose a petition must be presented to the Crown, which will be referred to the Attorney-General or Solicitor-General, who will make a report, upon which the licence will be either granted or refused. "The discretion exercised in making such report will probably be guided by the present opulent state of the members of the corporation, and the use intended to be made of the augmented revenue:" Shelf. Mortm. p. 41.

By sect. 21 of the Companies Act, 1862 (25 & 26 Vict. c. 89), joint-stock Licences by
companies formed for promoting art, science, religion, charity, or other like Board of
object, not involving the acquisition of gain, are forbidden to hold more than Trade in
two acres of land without the sanction of the Board of Trade, but the Board respect of
may licence any such company to hold lands in any quantity, and subject to certain
any condition (see *post*, p. 431). companies.

The form of licence is given in Sched. II., Form F., to the Act.

Under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 107, Approval of
the council of a municipal corporation not having power to acquire land in Treasury in
mortmain may, with the approval of the Treasury, acquire land in such case of
manner and upon such terms as the Treasury approve, and the same may be municipal
conveyed to and held by the corporation accordingly. corporations.

Existing charters and licences are expressly saved by sect. 12 of the present Saving for
Act, *post*. existing
charters and
licences.

(b) Defined by sect. 10 of this Act, *post*.

3. No entry or holding by or forfeiture to her Majesty Saving for
under this part of this Act, shall merge or extinguish, or rents and
otherwise affect, any rent or service which may be due services.
in respect of any land to her Majesty or any other lord
thereof (a).

(a) See note (a) to sect. 1, *ante*.

PART II.—CHARITABLE USES.

Conditions
under which
assurances
may be made
to charitable
uses (a).

4.—(1.) (b) Subject to the savings and exceptions contained in this Act (c), every assurance of land (d) to or for the benefit of any charitable uses, and every assurance of personal estate to be laid out in the purchase of land to or for the benefit of any charitable uses (e), shall be made in accordance with the requirements of this Act; and unless so made shall be void.

(2.) (f) The assurance (d) must be made to take effect in possession for the charitable uses to or for the benefit of which it is made immediately from the making thereof.

(3.) (g) The assurance (d) must, except as provided by this section (h), be without any power of revocation, reservation, condition, or provision for the benefit of the assurator or of any person claiming under him.

(4.) (i) Provided that the assurance (d), or any instrument forming part of the same transaction, may contain all or any of the following provisions, so, however, that they reserve the same benefits to persons claiming under the assurator as to the assurator himself; namely,

- (i.) The grant or reservation of a peppercorn or other nominal rent;
- (ii.) The grant or reservation of mines or minerals;
- (iii.) The grant or reservation of any easement;
- (iv.) Covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land;
- (v.) A right of entry on nonpayment of any such rent or on breach of any such covenant or provision;
- (vi.) Any stipulations of the like nature for the benefit of the assurator or of any person claiming under him.

Sect. 4.

(5.) (*j*) If the assurance is made in good faith on a sale for full and valuable consideration, that consideration may consist wholly or partly of a rent, rentcharge, or other annual payment reserved or made payable to the vendor, or any other person, with or without a right of re-entry for nonpayment thereof.

(6.) (*k*) If the assurance is of land, not being land of copyhold or customary tenure, or is of personal estate (*l*), not being stock in the public funds, it must be made by deed executed in the presence of at least two witnesses.

(7.) (*m*) If the assurance is of land (*d*), or of personal estate (*l*), not being stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made at least twelve months before the death of the assurator (*d*), including in those twelve months the days of the making of the assurance and of the death.

(8.) (*m*) If the assurance (*d*) is of stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made by transfer thereof in the public books kept for the transfer of stock at least six months before the death of the assurator, including in those six months the days of the transfer and of the death.

(9.) (*n*) If the assurance is of land (*d*), or of personal estate (*l*) other than stock in the public funds, it must, within six months after the execution thereof, be enrolled in the Central Office of the Supreme Court of Judicature, unless in the case of an assurance of land to or for the benefit of charitable uses those uses are declared by a separate instrument, in which case that separate instrument must be so enrolled within six months after the making of the assurance of the land (*o*).

(*a*) Sub-sects. (1), (2), (3), (6), (7), (8), and (9) of this section, combined with the definitions contained in sect. 10, substantially re-enact the whole of the provisions of sects. 1, 2, and 3, of 9 Geo. II. c. 36, commonly called the Mortmain Act. Sub-sect. (6) also takes the place of a portion of sect. 1 of 24 & 25 Vict. c. 9, and sub-sect. (9) of a portion of sect. 2 of the same Act. All the remaining provisions of sect. 1 of 24 & 25 Vict.

Former enactments.

Sect. 4
(a).

c. 9 requiring to be re-enacted are reproduced by sub-sects. (4) and (5) of the present section, and sub-sect. (5) is also substituted for sect. 4 of 27 & 28 Vict. c. 13.

The whole of 9 Geo. II. c. 36, except so much of [sect. 5 as was previously unrepealed (see *post*, p. 427), and the whole of 24 & 25 Vict. c. 9, and 27 & 28 Vict. c. 13, are repealed by sect. 13 of the present Act.

9 Geo. II.
c. 36.
Title and
preamble.

The Act 9 Geo. II. c. 36 was entitled "An Act to restrain the disposition of lands, whereby the same become unalienable." The preamble recited that, "Whereas gifts or alienations of lands, tenements, or hereditaments in mortmain, are prohibited or restrained by Magna Charta and divers other wholesome laws as prejudicial to and against the common utility; nevertheless this public mischief has of late greatly increased by many large and improvident alienations or dispositions made by languishing or dying persons or by other persons to uses called charitable uses, to take place after their deaths, to the disherison of their lawful heirs."

Sect. 1.

The first section enacted, "that from and after the 24th day of June which shall be in the year of our Lord 1736, no manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal, whatsoever, nor any sum or sums of money, goods, chattels, stocks in the public funds, securities for money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, shall be given, granted, aliened, limited, released, transferred, assigned, or appointed, or any ways conveyed or settled to or upon any person or persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever, or any ways charged or encumbered by any person or persons whatsoever, in trust, or for the benefit of any charitable uses whatsoever, unless such gift, conveyance, appointment, or settlement of any such lands, tenements, or hereditaments, sum or sums of money, or personal estate (other than stocks in the public funds) be and be made by deed indented, sealed, and delivered, in the presence of two or more credible witnesses, twelve calendar months at least before the death of such donor or grantor (including the days of the execution and death), and be enrolled in his Majesty's High Court of Chancery within six calendar months next after the execution thereof, and unless such stocks be transferred in the public books usually kept for the transfer of stocks six calendar months at least before the death of such donor or grantor (including the days of the transfer and death), and unless the same be made to take effect in possession for the charitable use intended immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him."

Sect. 2.

The second section provided, "that nothing hereinbefore mentioned relating to the sealing and delivery of any deed or deeds twelve calendar months at least before the death of the grantor, or to the transfer of any stock six calendar months before the death of the grantor or person making such transfer, shall extend, or be construed to extend, to any purchase of any estate or interest in lands, tenements, or hereditaments, or any transfer of any stock to be made really and *bond fide* for a full and valuable consideration actually paid at or before the making such conveyance or transfer, without fraud or collusion."

And by the third section it was enacted, "that all gifts, grants, con-

veyances, appointments, assurances, transfers, and settlements whatsoever, of any lands, tenements, or other hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect any lands, tenements, or hereditaments, or of any stock, money, goods, chattels, or other personal estate, or securities for money, to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect the same, to or in trust for any charitable uses whatsoever, which shall at any time from and after the said 24th day of June 1736 be made in any other manner or form than by this Act is directed and appointed, shall be absolutely, and to all intents and purposes, null and void."

Sections 4 and 5 of this Act will be found *post*, p. 426.

The Act 9 Geo. II. c. 36 has often, but improperly, been called the Statute of Mortmain. It was, however, and Part II. of the present Act now is, quite distinct from the Mortmain Acts properly so called, now represented by Part I. of this Act.

The Mortmain Acts, as we have seen, prohibited the acquisition of land by corporations; 9 Geo. II. c. 36 forbade the assurance of land for charitable purposes except upon certain conditions.

With regard to the distinction Jessel, M. R., in *Luckcraft v. Pridham*, 6 Ch. D. at p. 214, said: "It (9 Geo. II. c. 36) absolutely destroys the power, until that time possessed by men in England, of devising land by will to charitable purposes. . . . The Statute 9 Geo. II. c. 36 is strictly not at all in *pari materia* with the Mortmain Acts, though, no doubt, it went on the same line of policy; it deprives men of the power of devising to charities, which power it had been found in practice was abused."

With reference to the policy of 9 Geo. II. c. 36, Lord Hardwicke, in *Att.-Gen. v. Day*, 1 Ves. Sen. at p. 223, said, "This, though mentioned as a barbarous Act, is quite otherwise: far from being a prohibition of charitable foundations, it only restrains this method, leaving the disposition of personal property thereto free. The particular views of the legislature were two: first, to prevent the locking up of land, and real property from being aliened, which is made the title of the Act; the second, to prevent persons in their last moments from being imposed on to give away their real estates from their families." See also *Durour v. Motteux*, 1 Ves. Sen. 321; *Vaughan v. Farrer*, 2 Ves. Sen. at p. 189; *Att.-Gen. v. Lord Weymouth*, Amb. at p. 23; *Boson v. Statham*, 1 Cox, at p. 20; *Corbyn v. French*, 4 Ves. at p. 427; *Jeffries v. Alexander*, 8 H. L. C., at p. 648; *Ware v. Cumberlege*, 20 Beav. at p. 508; *Brook v. Badley*, L. R. 4 Eq. at p. 111.

The general effect of 9 Geo. II. c. 36, and that of Part II. of the present Act, is that property of the kinds mentioned cannot be assured for charitable purposes by deed *inter vivos*, whether voluntarily or for valuable consideration, unless certain requirements are complied with, the requirements being less stringent in the case of a conveyance for value than in the case of a voluntary conveyance.

"Assurance," however, also includes a will or codicil (see sect. 10, *post*, p. 439), and inasmuch as the requirements of the present section cannot be satisfied by a will or codicil, the result is, that property of the kind to which the section applies cannot be given by will to charitable uses.

The rule of construction for the purpose of determining whether a gift is

Sect. 4
(a).

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Distinction between Mortmain Acts and 9 Geo. II. c. 36.

Policy of 9 Geo. II. c. 36.

General effect of 9 Geo. II. c. 36, and present section. Assurances *inter vivos*.

Will.

Rule of construction.

Sect. 4
(a)–(f).

void under this section, is to ascertain, from the language of the will, what the testator's intention was, without reference to the mortmain provisions, and then to inquire whether there is anything in that intention contrary to the Act: *Tatham v. Drummond*, 4 De G. J. & S. 484; *Edwards v. Hall*, 11 Hare, at p. 16.

To what property section applies.

The question, what kinds of property come within the prohibition of this section, is dealt with in n. (c) to the present section, *post*, pp. 397 *et seq.*

Sub-sect. (1).

(b) This sub-section is partially substituted for sect. 1 of 9 Geo. II. c. 36, and incorporates the whole of the avoiding section (sect. 3) of that Act.

Difference between old and new provision.

Sect. 3 of the old Act expressly included "any charge or incumbrance affecting or to affect any lands, tenements, or hereditaments," among the things of which assurances, not in accordance with the requirements of the Act, were avoided. The present Act follows sect. 1 of 9 Geo. II. c. 36, in making "assurance" include "mortgage, charge, incumbrance," but in the definition of "land" (*post*, p. 440) the words "charge" and "incumbrance" on land are not expressly included. A charge or incumbrance would, however, no doubt, be an interest in land within the meaning of the definition. In other respects this sub-section is equally comprehensive with sect. 3 of 9 Geo. II. c. 36.

(c) See sects. 6, 7, 8, and 10, *post*.

Definitions.

(d) "Land" is defined by sect. 10 of the present Act to include "tenements and hereditaments corporeal and incorporeal of whatsoever tenure, and any estate and interest in land."

"Assurance" is defined to include "a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, will, or other instrument," and "assure" and "assuror" have corresponding meanings. "Will" is defined to include "codicil."

(e) As to what are charitable uses, see *ante*, Part I. of this Book, Ch. I.

Sub-sect. (2).

(f) This sub-section re-enacts one of the provisions of sect. 1 of 9 Geo. II. c. 36.

Resulting trust to grantor.

Where there was a resulting trust to the grantor during his life, in consequence of no trust being declared for the charity during that period, the grant was held void as not being to take effect in possession for the charitable use immediately from the making thereof: *Limbrej v. Gurr*, 6 Madd. 151; *Morris v. Owen*, W. N. 1875, 134.

On the same ground a grant of a lease for charitable purposes, to commence at a date fifteen days afterwards, was held void: *Webster v. Southey*, 36 Ch. D. 9.

26 & 27 Vict. c. 106.

By an Act, 26 & 27 Vict. c. 106, which still remains unrepealed, after reciting the provisions of 24 & 25 Vict. c. 9, and 25 & 26 Vict. c. 17, for extending the time for enrolling assurances to charitable uses which had not been enrolled (as to which, see further sect. 5 of the present Act, and notes thereto), it is enacted (sect. 1) that "Every deed or assurance by which any land shall have been demised for any term of years for any charitable use shall, for all the purposes of the said recited Acts, be deemed to have been made to take effect for the charitable use thereby intended immediately from the making thereof, if the term for which such land shall have been thereby demised was thereby made to commence and take effect in

possession at any time within one year from the date of such deed or assurance."

Section 4
(f), (g).

It is not necessary that possession should actually be taken, if the effect of the deed is to give a right to immediate possession: *Fisher v. Brierley*, 10 H. L. C. 159.

Possession
need not be
taken.

Where, however, the deed was kept in the donor's possession until his death, and no possession was taken, it was held void: *Att.-Gen. v. Brichnell*, 1 Jur. 540.

But a grant by a rector, in trust for the rector for the time being, was good, although the deed was kept by the grantor: *Att.-Gen. v. Munby*, 1 Mer. 327; and see *Att.-Gen. v. Poulden*, 8 Sim. 472.

A gift of a reversion might, it seems, be good, unless created for the purpose of evading the Act: *Doe v. Lloyd*, 5 Bing. N. C. 741; *Att.-Gen. v. Milbank*, 28 Beav. 206, where a rent-charge was granted in lieu of tithes, but if the vicar should insist on taking the tithes, then for the poor; *Wickham v. Marquis of Bath*, L. R. 1 Eq. 17. And a conveyance subject to a lease must include the interest of the lessor in the rent as well as the reversion: *Wickham v. Marquis of Bath*, *supra*.

Grant of
reversion.

Where stock in the funds representing moneys partly collected and partly appropriated by the transferor for building a church, were transferred by her into the names of herself and another, but no declaration of trust was ever executed, and the immediate building of a church was not contemplated, it was held void as not taking effect in possession for the charitable use from the date of the transfer: *Girdlestone v. Creed*, 10 Hare, 480.

Transfer of
stock for
building
future church.

(g) This sub-section re-enacts a provision of sect. 1 of 9 Geo. II. c. 36.

Sub-sect. (3).

The language of the corresponding part of the old section was "power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever." The word "provision" in the present section is wide enough to include all the words of the old Act not reproduced.

Former
enactment.

An agreement or understanding among the parties to the deed that the payment of income shall not be enforced during the life of the grantor, renders the deed void, the transaction being considered a fraud upon the statute: *Wickham v. Marquis of Bath*, L. R. 1 Eq. 17; see *Morris v. Owen*, W. N. 1875, 134. But the onus of proving such an agreement or understanding rests on those who allege it: *Way v. East*, 2 Dr. at p. 44; see also *Doe v. Pitcher*, 3 M. & S. 407; *Att.-Gen. v. Poulden*, 8 Sim. 472; and *Fisher v. Brierley*, 10 H. L. C. 159. The reservation of rent, or a right of pre-emption in a lease granted for charitable purposes, would be void under this provision: *Webster v. Southey*, 36 Ch. D. 9.

Agreement
for benefit of
donor.

The donor may, however, reserve to himself the power of regulating the charity: *Grieves v. Case*, 2 Cox, 301.

Right to
regulate
charity.

A condition that a vault and tomb should be repaired and used for the grantor and his family was held not to be a reservation rendering a conveyance invalid within the meaning of 9 Geo. II. c. 36, the object of the Act only being to prevent a reservation, under colour of a charitable use, of some substantial benefit to the donor himself: *Doe v. Pitcher*, *supra*.

A grant by indenture executed more than twelve months before the grantor's death, and duly enrolled, of a house and premises held under a church lease to Trinity College, Cambridge, in trust for the rector of a parish, was held valid, notwithstanding that the grantor was himself, at the time of

Grant of
advowson by
rector.

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(g)–(j).

the grant, rector of the parish, and retained the deed in his own possession : *Att.-Gen. v. Munby*, 1 Mer. 327. "The grant," said Grant, M.R., at p. 342, "does not contain any . . . reservation : . . . the gift does take effect immediately in possession ; . . . there is no power of revocation, no trust express or implied, from which the grantor in his individual capacity can derive any benefit ; and although it is said that, on the face of the deed, the grantor is rector, and his gift is a gift for the benefit of the rector, yet it must, on the other hand, be acknowledged that this is a case for which the statute makes no provision, which is entirely out of its contemplation ; that the gift itself is absolute and irrevocable ; the benefit which the grantor enjoys under it only accidental ; his enjoyment of the property no longer an enjoyment as owner, but as attached to the situation in which he happens to be placed. The moment he quits that situation, he loses all enjoyment of the property, and that may be by circumstances over which he has no manner of control, by deprivation, or appointment to a higher benefice, perhaps at the very moment when he is executing the instrument. The legislature had no intention or thought of precluding this sort of incidental advantage, and to construe the statute otherwise would be to prohibit a rector from bestowing any endowment on his own living."

Proviso for redemption.

A proviso for redemption in a mortgage deed is not a condition for the benefit of the assesor within the meaning of the section : *Doe v. Hawkins*, 2 Q. B. 212, decided on language in 9 Geo. IV. c. 85, s. 1, similar to that in 9 Geo. II. c. 36, s. 1. And investments on real securities are now expressly authorized by 33 & 34 Vict. c. 34, see *ante*, p. 277.

(h) See sub-sect. 4 of this section.

Sub-sect. (4).

(i) This sub-section re-enacts, without substantial alterations, provisions contained in sect. 1 of 24 & 25 Vict. c. 9.

Sub-sect. (5).

(j) This sub-section takes the place of a provision contained in sect. 1 of 24 & 25 Vict. c. 9, as amended by 25 & 26 Vict. c. 17, and also of the provisions of sect. 4 of 27 & 28 Vict. c. 13.

Former doubts as to conveyance subject to rent-charge.

It was formerly doubted whether a conveyance of land to charitable uses, subject to a perpetual rent-charge, was valid under 9 Geo. II. c. 36, even though such rent-charge was fully equal to the value of the land ; and in the case of *The Manchester Infirmary* an Act of Parliament was obtained for the purpose of removing the difficulty : see Boyle on the Law of Charities, p. 117 ; 1 Evans' Stat., p. 327, n. 5.

24 & 25 Vict. c. 9.

The doubt was removed by sect. 1 of 24 & 25 Vict. c. 9, but the language of the preamble to that Act occasioned a question to be raised, whether the section referred to any hereditaments not of copyhold or customary tenure.

25 & 26 Vict. c. 17.

In order to settle that question, 25 & 26 Vict. c. 17, was passed, by sect. 2 of which it was declared that sect. 1 of 24 & 25 Vict. c. 9, extended to all hereditaments, whether of freehold or of customary or copyhold tenure, and to every estate and interest therein.

27 & 28 Vict. c. 13.

Finally 27 & 28 Vict. c. 13, s. 4, provided that every full and *bonâ fide* valuable consideration within sect. 1 of 24 & 25 Vict. c. 9, which should consist wholly or partly of a rent or other annual payment reserved or made payable to the vendor or grantor, or any other person, should, for the purposes of 9 Geo. II. c. 36, be as valid as if such consideration had been a sum of money actually paid at or before the making of the conveyance, without fraud or collusion.

24 & 25 Vict. c. 9; 25 & 26 Vict. c. 17; and 27 & 28 Vict. c. 13, are all repealed by sect. 13 of the present Act.

The definition of "land" in sect. 10, sub-sect. (iii), of the present Act, includes copyholds as well as freeholds.

There is some superfluity of language in sub-sect. (5) of the present section, taken in connection with sect. 10, sub-sect. (iv), (*post*, p. 440), by which "full and valuable consideration" is defined to include "such a consideration, either actually paid upon or before the making of the assurance, or reserved or made payable to the vendor, or any other person by way of rent, rent-charge, or other annual payment in perpetuity, or for any term of years or other period, with or without a right of re-entry for nonpayment thereof, or partly paid and partly reserved as aforesaid." That definition was not in the bill as it was first introduced into Parliament.

(k) This sub-section re-enacts a provision of sect. 1 of 9 Geo. II. c. 36, as modified by sect. 1 of 24 & 25 Vict. c. 9. The first of those enactments provided that assurances should be by "deed indented, sealed and delivered in the presence of two or more credible witnesses;" and the second, that no deed or assurance for any charitable uses of any hereditaments of any tenure should be void within the meaning of 9 Geo. II. c. 36, by reason of the same not being indented, or not purporting to be indented, or (in the case of an assurance of hereditaments of copyhold or customary tenure, or of any estate or interest therein) by reason of the same not being made by deed.

Notwithstanding that under 9 Geo. II. c. 36, the grant had to be by deed indented and enrolled, copyholds were always held to be within that Act, and could, even previously to 24 & 25 Vict. c. 9 (*ante*, p. 392), be conveyed to charitable uses by the usual surrender, followed by a deed declaring the uses of the surrender, indented and enrolled pursuant to the Act: *Doe v. Waterton*, 3 B. & Al. 149; *Arnold v. Chapman*, 1 Ves. Sen. 108; *Browne v. Ramsden*, 2 Moo. 612; and see *Scriven Copyh.* 6th ed. p. 102.

The deed must be executed in the presence of two witnesses, who must sign the attestation clause. The mere fact that two persons are present at the execution, if they do not sign the deed as witnesses, is not sufficient. A deed attested by one witness, though executed in the presence of two persons who execute the deed as parties, but do not sign the attestation clause, is not sufficient: *Wickham v. Marquis of Bath*, L. R. 1 Eq. 17. See also *Doe v. Munro*, 12 M. & W. 845.

It is sufficient if the deed is executed by the grantor. It need not be also executed by the grantees: *Grieves v. Case*, 2 Cox, 301.

A deed purporting to confirm a prior invalid assurance must, of course, follow the provisions of the Act: *Wickham v. Marquis of Bath*, *supra*; cf. *Att.-Gen. v. Munro*, 9 Jur. 461; *ibid.*, 2 De G. & Sm. 122.

(l) *I. e.*, personal estate to be laid out in the purchase of land to or for the benefit of any charitable uses: see sub-sect. 1 of the present section.

(m) Sub-sects. 7 and 8 are taken from sect. 1 of 9 Geo. II. c. 36. They also comprise the whole of sect. 2 of the same Act: *supra*, note (a) to the present section.

If the grantor die within twelve months after the execution of the deed, it is rendered void, notwithstanding that it may have been properly enrolled: *Price v. Hathaway*, 6 Madd. 304. A deed thus rendered void does not revoke a devise contained in a prior will: *Matthews v. Venables*, 2 Bing. 136.

Where a declaration of trust was executed by the persons to whom a sum

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(j)–(m).

Repeal.

Present Act includes copyholds. Superfluity of language.

Sub-sect. (6). Former enactments.

Copyholds within 9 Geo. II. c. 36.

Attestation.

Deed confirming prior invalid deed.

Sub-sects. (7) and (8).

Death of assesor within twelve months.

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(m).

of money was given by a donor upon trusts not excluding the acquisition of land, namely, the erection, establishment, and support of a hospital, and the donor died within twelve months after the execution, the gift was held invalid: *Hawkins v. Allen*, L. R. 10 Eq. 246.

If, however, the deed takes effect, it does so from the date of execution: *Trye v. Corporation of Gloucester*, 14 Beav. 173.

Exception of
assurances for
full and
valuable
consideration.

The exception of assurances made in good faith for full and valuable consideration is taken from sect. 2 of 9 Geo. II. c. 36 (*ante*, p. 388).

With regard to that section, Lord Hardwicke observed, in *Att.-Gen. v. Day*, 1 Ves. Sen. at p. 222, "The first clause . . . (*i. e.*, sect. 1 of the Act) was intended to relate to gifts or conveyances to a charity by way of donation. And it is plain that the legislature did not intend absolutely to forbid all kinds of purchases of lands for the benefit of a charity, but has put them under some restrictions. The proviso (*i. e.*, sect. 2) was inserted in the House of Lords upon mention of the case of the Charity of Queen Anne's Bounty, which could not otherwise have gone on; as the method of executing it is that the money arising out of that fund is laid out in purchase of real estate for the augmentation of poor vicarages;" and again, "The meaning was that when such purchases are made, they should not be left precarious in point of time, so that though the party should happen to die within the twelve or six months, yet the person who paid the money should not lose his purchase or be put to risk the recovery of it back, as there might not be assets, or stocks might fall." See also *Vaughan v. Farrer*, 2 Ves. Sen. at p. 188; and *Price v. Hathaway*, 6 Madd. at p. 312.

The 2nd section of 9 Geo. II. c. 36, merely relieved purchasers for full and valuable consideration from the liability to be avoided by the death of the grantor within twelve months or six months, as the case might be, but it did not relieve them from the necessity of satisfying the other requirements of sect. 1 of the Act. See *Att.-Gen. v. Day*, 1 Ves. Sen. at p. 222; *Price v. Hathaway*, 6 Madd. at p. 312.

9 Geo. IV.
c. 85.

That this was the meaning of the section was afterwards expressly declared by 9 Geo. IV. c. 85. As to the Acts which were passed from time to time for extending the time for enrolment, see n. (a) to sect. 5 of this Act, *post*, p. 421.

Under present
Act.

Sub-sects. (7) and (8) of the present section make it clear that the intention of the legislature is that the validity of assurances for valuable consideration shall not be dependent upon the survival of the assurator for twelve months or six months afterwards, as the case may be. In other respects, however, no distinction is made between an assurance for valuable consideration and a voluntary gift.

Consideration
must be paid
by person
benefited.

It was held that, in order to bring a case within sect. 2 of 9 Geo. II. c. 36, and now presumably within the exception to sub-sects. (7) and (8) of the present section, the consideration must be paid by the person for whose benefit the conveyance was made. Where, therefore, the consideration for a conveyance to trustees for the churchwardens and overseers of the poor and the inhabitants of the parish was that 174*l.* had been expended by the parish officers in maintaining the wife and children of the grantor, it was held that the conveyance was not within the 2nd section: *Doe v. Howells*, 2 B. & Ad. 744.

Consideration
to be full as

It is to be noticed also that, in order to bring a case within the exception, the consideration must be full as well as valuable. The *quantum* of the

consideration is, therefore, material. In this the provision follows the 2nd section of 9 Geo. II. c. 36.

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(m), (n).

A demise of land on which the lessor had built a chapel in consideration of subscriptions raised among the congregation being expended on enlarging the chapel, and in consideration of a peppercorn rent during the lessor's life, and 10*l.* a year after his death, was held not to be a full consideration so as to bring the case within sect. 2 of 9 Geo. II. c. 36: *Doe v. Hawthorn*, 2 B. & Al. 96.

well as
valuable.

Exceptions have in some cases been created by special statutes from the liability of a conveyance for charitable purposes to be avoided by the death of the grantor within twelve months.

Exceptions.

Under 7 & 8 Vict. c. 37, s. 3, deeds executed under the powers and for the purposes contained in 4 & 5 Vict. c. 38, intituled "An Act to afford further facilities for the Conveyance and Endowment of Sites for Schools," without any valuable consideration, continue valid if otherwise lawful, although the donor die within twelve months from the execution. A similar provision will be found in 12 & 13 Vict. c. 49, s. 4. See *post*, p. 438, where these sections are more fully stated.

School Sites
Acts, 1841 to
1861.

The same is the case under 17 & 18 Vict. c. 112, s. 14, with regard to institutions for science, literature, and the fine arts. See *post*, p. 428.

Science,
literature,
and fine arts.

And assurances under the Places of Worship Sites Act, 1873 (36 & 37 Vict. c. 50), s. 4, continue valid if otherwise lawful, although the donor or grantor die within twelve months from the execution thereof. See *post*, p. 438.

Places of
Worship Sites
Act, 1873.

All existing exemptions are preserved by sect. 8 of the present Act. And with regard to such exemptions, see further n. (a) to that section, *post*, pp. 429 *et seq.*

Preservation
of exemp-
tions.

(n) Sub-sect. (9) re-enacts the corresponding provision in sect. 1 of 9 Geo. II. c. 36, and also incorporates sect. 2 of 24 & 25 Vict. c. 9. The latter section provided that where the charitable uses were declared by a separate instrument that instrument alone required enrolment, and it went on to say that unless the separate deed was duly enrolled the conveyance should be void, and that the enrolment of the separate deed was to be deemed and treated as if the conveyance had declared the charitable uses and had been enrolled. The present section merely provides that an assurance not made in accordance with the requirements of the Act is void, and that where the conveyance is by one deed and the declaration of the uses by another, the deed declaring the uses is to be enrolled. If the deed declaring the uses were not enrolled it would not comply with the requirements of the Act, and would be void; but the conveyance which did not require enrolment might have complied with the requirements of the Act, and, if so, the Act does not expressly avoid it. It seems probable, however, that the words "assurance of land for charitable uses" under sub-sect. (1) includes all the deeds (if more than one) employed for vesting the property to the uses intended.

Sub-sect. (9).
Former
enactments.

Deeds requiring enrolment under 9 Geo. II. c. 36 were formerly enrolled in Chancery. But by the Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 5, the Enrolment Office was amalgamated with the Central Office of the Supreme Court of Judicature, and by R. S. C. 1883, Ord. LXI. rule 9, it is provided that such deeds may be enrolled in the Enrolment Department of the Central Office. See also note (c) to sect. 5 of this Act, *post*, p. 422.

Enrolment.

It was formerly necessary that instruments should be acknowledged

Acknowledg-
ment.

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(n).

before they could be enrolled in Chancery, but by 31 & 32 Vict. c. 44, s. 3, it was provided that from and after the passing of that Act it should not be necessary to acknowledge any deed or instrument in order that the same might be enrolled in Chancery. See also sect. 5 of 24 & 25 Vict. c. 9, repealed by the present Act.

Sufficient if grantor executes deed before enrolment.

It is sufficient if the grantor has executed the deed before enrolment, notwithstanding that the grantees may not have done so: *Grieves v. Case*, 2 Cox, 301; and notwithstanding that the grantor may afterwards retain it in his possession: *Att.-Gen. v. Munby*, 1 Mer. 327; *Fisher v. Brierley*, 10 H. L. C. 159.

Grantor may take advantage of want of enrolment.

If the deed be not duly enrolled the grantor is not estopped from taking advantage of the non-enrolment and recovering the property: *Doe v. Hawthorn*, 2 B. & Al. 96; *Doe v. Howells*, 2 B. & Ad. 744; *Doe v. Wrighte*, 2 B. & Al. 710; *Bunting v. Sargent*, 13 Ch. D. 330.

Invalid trust not executed by Court.

The trusts of a deed which is invalid in consequence of non-compliance with the provisions of this section, will not be carried into execution by the Court: *Att.-Gen. v. Gardner*, 2 De G. & Sm. 102.

And this will be so, even though money bequeathed for the purchase of land has been actually received and laid out in such purchase: *Att.-Gen. v. Ackland*, 1 R. & M. 243.

Enrolment not presumed.

Nor will enrolment be presumed even after the lapse of a considerable period: *Doe v. Waterton*, 3 B. & Al. 149; *Wright v. Smythies*, 10 East, 409.

Trustee claiming against trust.

But the Court will not, after long lapse of time, allow a trustee to claim beneficially because no enrolled conveyance can be produced. If the trustee set up the invalidity of the foundation of the charity as a defence to an action for an account, the burden of proof is upon him and everything must be presumed against him: *Att.-Gen. v. Moor*, 20 Beav. 119.

And a person who has acquired possession of property as trustee under a duly enrolled deed cannot take advantage of his position as trustee to set up against the trust a paramount title derived from the fact that the enrolled deed was preceded by an unenrolled, and therefore void, deed purporting to have the same effect, and that some of the persons who were parties to the first deed were not parties to the second: *Att.-Gen. v. Munro*, 2 De G. & Sm. 122, 163; and see *ibid.* 9 Jur. 461.

Courts not bound to take objection as to want of enrolment.

It has been held that the Courts are not bound upon principles of public policy to take the objection of the absence of enrolment, if the party legally entitled to the property does not insist upon it. Hence, where trustees of a Dissenters' meeting-house, in whom the legal estate was vested, admitted the trusts, and did not raise the objection that the deed was void as not being enrolled under the statute, but submitted to act as the Court should direct, it was held by Wigram, V.-C., that it was not competent to persons who had seceded from the society to raise the objection, and that the Court might appoint new trustees of the land: *Att.-Gen. v. Ward*, 6 Hare, 477.

Proof of enrolment.

The production of a deed with an endorsed memorandum, "Enrolled in his Majesty's High Court of Chancery, the 17th day of December, 1836, being first duly stamped according to the tenor of the statutes made for that purpose—D. Drew," was held sufficient evidence of enrolment, without proving the signature or official character of Drew, it having been certified

to the Court by an officer of the Enrolment Office that the memorandum was in the usual form : *Doe v. Lloyd*, 1 M. & Gr. 671, 684, 685.

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(n), (o).

Enrolments are also proved by means of office copies; and such copies are evidence not only of the enrolment itself, but also of the contents of the instruments enrolled: 12 & 13 Vict. c. 109, s. 17; Taylor on Evidence, 8th ed. p. 1406.

A conveyance or lease to charity of land already in mortmain need not comply with the formalities required by the present section, the reason being that such a case is not within the mischief aimed at by the legislature: *Walker v. Richardson*, 2 M. & W. 582; *Att.-Gen. v. Glyn*, 12 Sim. 84.

Conveyance of land already in mortmain.

Similarly, where lands have once been conveyed to charity under a deed duly enrolled, a subsequent conveyance to another charity may be made without the prescribed formalities: *Ashton v. Jones*, 28 Beav. 460.

But the enrolment of a deed by which land is purchased for charitable uses is necessary, although the purchase-money arises from the sale of lands already in mortmain: *Re Governors of Christ's Hospital*, 12 W. R. 669.

Purchase-money arising from sale of lands in mortmain.

In one case a purchase of a cottage and lands by the overseers and churchwardens of a parish for the purpose of a workhouse was held not to be a purchase for a charitable use, and not, therefore, to require enrolment: *Burnaby v. Barsby*, 4 H. & N. 690. But this case has been recently questioned in *Webster v. Southey*, 36 Ch. D. 9, where a lease of land upon trust to erect a workhouse was held to be within 9 Geo. II. c. 36, and is inconsistent with other authorities cited *ante*, pp. 13, 14.

Purchase for workhouse.

In *Doe v. Hawkins*, 1 G. & D. 551, a doubt was expressed whether a mortgage to trustees of a charity is within 9 Geo. II. c. 36, so as to require enrolment. But see *ante*, p. 390.

Mortgage.

(o) The property to which the prohibitions of this section apply is land and personal estate to be laid out in the purchase of land.

Property within section.

Land is defined by sect. 10 to include "tenements and hereditaments corporeal and incorporeal of whatsoever tenure, and any estate and interest in land."

The Act 9 Geo. II. c. 36, added the words, "any charge or incumbrance affecting or to affect any lands, tenements, or hereditaments." These words are not found in the present Act; but charges and incumbrances affecting land are clearly included in the expression "any estate and interest in land."

Same as in 9 Geo. II. c. 36.

There is, therefore, no substantial difference in this respect between the old and the present enactments. Accordingly the decisions on the old Act with regard to what property falls within the statutory prohibitions apply to the present section.

Old decisions apply.

These decisions have mainly turned upon gifts by will. It will, however, be borne in mind that property which cannot be given to charity by will cannot be assured *inter vivos*, unless the requirements of the section are observed.

The section applies to property falling within the following general descriptions:—

General heads.

- (1) Lands, tenements, and hereditaments.
- (2) Estates and interests therein.
- (3) Money to be laid out in the purchase of lands, tenements, and hereditaments.

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Land of any
tenure in-
cluded.(1) *Lands, tenements, and hereditaments.*

The statute 9 Geo. II. c. 36, applied, and the present section applies, to land of any tenure, whether freehold, copyhold (*Arnold v. Chapman*, 1 Ves. Sen. 108; *Doe v. Waterton*, 3 B. & Al. 149; and see *Browne v. Ramsden*, 2 Moo. 612), or leasehold: *Att.-Gen. v. Graves*, Amb. 155; *Att.-Gen. v. Tomkins*, *ibid.* 216; *Johnston v. Swann*, 3 Madd. 457; *Paice v. Archbishop of Canterbury*, 14 Ves. 364; *Entwistle v. Davis*, L. R. 4 Eq. 272, 277; *Bunting v. Sargent*, 13 Ch. D. 330, where a lease of a Dissenting chapel was void for non-enrolment.

A conveyance or lease of land for a charitable purpose, which does not satisfy the provisions of the Act, is not the less void because the trustees have power to sell the land and apply the proceeds to other purposes: *Bunting v. Sargent*, *supra*.

All devises and bequests of freeholds, copyholds, or leaseholds to charitable purposes made by wills dated or re-published after the passing of 9 Geo. II. c. 36, are, consequently, void: *Arnold v. Chapman*, 1 Ves. Sen. 108; *Att.-Gen. v. Tomkins*, Amb. 216; *Att.-Gen. v. Graves*, *ibid.* 155; *Johnston v. Swann*, 3 Madd. 457; *Paice v. Archbishop of Canterbury*, 14 Ves. 364; *Entwistle v. Davis*, L. R. 4 Eq. 272, 277.

Devise prior
to 9 Geo. II.
c. 36.

A devise of land for charitable purposes contained in a will executed before 9 Geo. II. c. 36, was valid, although the testator died after the Act came into operation: *Ashburnham v. Bradshaw*, 2 Atk. 36; *Att.-Gen. v. Andrews*, 1 Ves. Sen. 225; but see *Att.-Gen. v. Heartwell*, Amb. 451; *Att.-Gen. v. Lloyd*, 3 Atk. 551. Otherwise, however, where the will had been executed before, but re-published after the passing of that Act: *Willet v. Sandford*, 1 Ves. Sen. 178, 186. See also *Att.-Gen. v. Bradley*, 1 Eden, 482.

Rent-charge.
Annuity.

A rent-charge issuing out of land being itself real estate cannot, of course, be devised to charity. But a gift to charity of an annuity which is not real estate, and is not connected with land, is good. Thus, an annuity granted to a person and his heirs by King Charles II., to be paid out of his revenue of 4½ per cent. at Barbadoes and the Leeward Islands, was held to be personal property, and capable of being bequeathed to charity: *Earl of Stafford v. Buckley*, 2 Ves. Sen. 171, 178; *Aubin v. Daly*, 4 B. & Al. 59. See also *Lady Holderness v. Lord Carmarthen*, 1 Bro. C. C. 377; *Sorresby v. Hollins*, 9 Mod. 221; *Att.-Gen. v. Graves*, Amb. 157, n.; *Waite v. Webb*, 6 Madd. 71.

Growing
crops.

A gift to charity of growing crops is invalid: *Symonds v. Marine Society*, 2 Giff. 325.

Tithes.

So, also, a devise of tithes: *Burr v. Miller*, W. N. 1872, 63; and see *Denton v. Lord John Manners*, 2 De G. & J. 675.

Tenant's
fixtures.

But tenant's fixtures which the tenant has a right to remove, being merely personal chattels, may be validly bequeathed: *Johnston v. Swann*, 3 Madd. 457, 467.

(2) *Interests in land.*Rents and
profits.

A bequest of the rents and profits of land (*Thorner v. Wilson*, 3 Dr. 245; 4 Dr. 350; *Att.-Gen. v. Lord Weymouth*, Amb. at p. 24), or of an annual sum to be paid out of rents (*Ridgway v. Woodhouse*, 7 Beav. 437), is void. But a bequest of arrears of rent is not within the section: *Edwards v. Hall*, 6 De G. M. & G. 74; *Thomas v. Howell*, L. R. 18 Eq. 198; *Brook v. Badley*, L. R. 4 Eq. 106.

Proceeds of
sale.

A bequest of proceeds of sale of real estate, or of a legacy from a fund to be produced by such a sale, is void (*Att.-Gen. v. Lord Weymouth*, Amb. 20;

Durour v. Motteux, 1 Ves. Sen. 320; *Curtis v. Hutton*, 14 Ves. 537; *Paice v. Archbishop of Canterbury*, 14 Ves. 364; *Gibbs v. Rumsey*, 2 V. & B. 294; *Page v. Leapingwell*, 18 Ves. 463; *Jones v. Mitchell*, 1 S. & S. 290; *Trustees of the British Museum v. White*, 2 S. & S. 595; *Waite v. Webb*, 6 Madd. 71; *Thornber v. Wilson*, 3 Dr. 245; 4 Dr. 350; *Incorporated Church Building Society v. Coles*, 5 De G. M. & G. 324; *Robinson v. Robinson*, 19 Beav. 494; *Graham v. Paternoster*, 31 Beav. 30), not because it comes within the express words, but because it comes within the meaning of the Act; inasmuch as if such a bequest was allowed, the charity to whom the bequest was made might elect to take the land. See per Leach, V.-C., in *Att.-Gen. v. Harley*, 5 Madd. at p. 327; and per Lord Cairns in *Brook v. Badley*, L. R. 3 Ch. at p. 674.

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On the same ground, the proceeds of real estate by a prior will directed to be sold cannot, so long as the sale has not taken place, be bequeathed to charity.

In *Att.-Gen. v. Harley*, 5 Madd. 321, a testator, having several charges on lands, by his will directed his executors to convert all his property into money, and pay the residue to his wife. The wife died before the charges in question were paid off, having bequeathed her property to charities. It was argued that if the trustees had raised the money before the wife's death, as they should have done, the charitable bequest would have been valid, and that their breach of duty ought not to invalidate it. Leach, V.-C., however, held that the sums, so long as they were not raised, continued to be an interest in the land, and that the bequest was, consequently, void.

Att.-Gen. v. Harley.

A contrary decision was come to in *Shadbolt v. Thornton*, 17 Sim. 49, more fully reported 13 Jur. 597, and *Marsh v. Att.-Gen.*, 2 J. & H. 61.

Contrary decisions.

In *Shadbolt v. Thornton*, a testatrix possessed of leaseholds and pure personality appointed her brother universal legatee and executor. Her pure personality was more than sufficient to pay her debts, funeral, and testamentary expenses. Her brother died nine days after her, having left the whole of his property to charities. His executors took out administration to the testatrix and sold the leaseholds. It was held by Shadwell, V.-C., that the charities were entitled to the proceeds under his will, on the ground that it was the duty of the lady's administrators to sell the leaseholds, and that they must be considered as impressed with the character which they would have borne had that duty been performed.

Shadbolt v. Thornton.

In *Marsh v. Att.-Gen.*, a testator at the time of his death was entitled, expectant on the death of a tenant for life, to one-fourth share of the proceeds of a freehold messuage, devised, subject to the tenancy for life, to trustees for sale. The testator having given his property to a charity, it was held by Wood, V.-C., that the interest of the testator in the proceeds of the sale of land directed by the former testator to be sold for the purpose of distribution was not an interest in land.

Marsh v. Att.-Gen.

In *Brook v. Badley*, L. R. 3 Ch. 672, a testator directed his real estate to be sold after the death of his wife, and out of the proceeds of such sale, and out of his personal estate, he directed a certain legacy to be paid. The person entitled to that legacy died in the lifetime of the wife, having by her will bequeathed all her personal property to trustees for charitable purposes; it was held by Lord Cairns that the legacy was an interest in land, and could not, whilst it remained unpaid, be bequeathed by the legatee for charitable purposes.

Brook v. Badley.

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"It," said his Lordship (at pp. 673, 674), "a testator devises his real estate to be sold, and the proceeds paid to A. B., and A. B. subsequently makes his will, and either devises those proceeds by name, or devises all his property to charity, the proceeds of the sale of that real estate will not go to the charity, and the bequest of the second testator to that extent is invalid. That is not matter in controversy at the present day. It has, indeed, been suggested as the reason for this, that the second testator, or those who claim under him, might, instead of having the land sold, insist upon taking it in its unconverted form, and thus the charity might become the actual possessor of specific real estate. But this cannot be the true reason; for if a testator devises his land to be sold, and the proceeds given, not to one person, but to four persons, in shares, and if one of those four persons afterwards makes his will and gives either his share of the proceeds or all his property to charity, the position of that second testator with regard to the estate which is to be sold is, in substance, that of a person who has a direct and distinct interest in land. The estate is in the hands of trustees, not for the benefit of those trustees, but for the benefit of four persons between whom the proceeds of the estate are to be divided when the sale takes place. It may very well be that no one of those four persons could insist upon entering on the land, or taking the land, or enjoying the land, *qua* land, and it may very well be that the only method for each one of them to make his enjoyment of the land productive is by coming to the Court and applying to have the sale carried into execution, but nevertheless the interest of each one of them is, in my opinion, an interest in land; and it would be right to say in equity that the land does not belong to the trustees, but to the four persons between whom the proceeds of sale are to be divided. If the cases of *Marsh v. Att.-Gen.* and *Shadbolt v. Thornton* are at variance with these principles, then I am unable to follow those authorities." See also *Aspinall v. Bourne*, 29 Beav. 462; *Cadbury v. Smith*, L. R. 9 Eq. at p. 43; *Lucas v. Jones*, L. R. 4 Eq. 73, where *Shadbolt v. Thornton* was held not to be binding; *Re Hill's Trusts*, 16 Ch. D. 173; *Ashworth v. Munn*, 15 Ch. D. at p. 371, where Brett, M. R., said that *Marsh v. Att.-Gen.* was overruled by *Brook v. Badley*.

No apportionment.

Nor is there in such a case any principle of apportionment by which so much of the legacy as would be paid out of personalty can be made available for the charity. The case is the same as if the second testator at the time of his death had a sum secured by mortgage of both real and personal estate. The whole sum is charged on every part of the security, and the Court cannot negative the security on the realty, and say that, to a certain extent, the sum is to be secured on the personalty only: *Brook v. Badley*, L. R. 3 Ch. 672; *Re Watts, Cornford v. Elliott*, 29 Ch. D. 947. See *Re Hill's Trusts*, 16 Ch. D. 173, where Malins, V.-C., directed an apportionment. This is, of course, entirely different from the cases in which the question has been one of marshalling as between the real and personal estate of the testator bequeathing the charitable legacy. As to these, see *ante*, pp. 60 *et seq.*

Mortgages.

Money secured by mortgage in fee or for a term (*Att.-Gen. v. Meyrick*, 2 Ves. Sen. 44; *Att.-Gen. v. Caldwell*, Amb. 635; *White v. Evans*, 4 Ves. 21; *Att.-Gen. v. Earl of Winchelsea*, 3 Bro. C. C. 373; *Johnston v. Swann*, 3 Madd. 457; *Att.-Gen. v. Harley*, 5 Madd. 321; *Att.-Gen. v. Hurst*, 2 Cox, 364; *Currie v. Pye*, 17 Ves. 462), or on mortgage of leaseholds (*Chester v. Chester*, L. R. 12 Eq. 444), or by equitable mortgage, even though by mere deposit

of deeds and by way of collateral security, the primary security being a bond or promissory note (*Alexander v. Brame* (No. 2), 30 Beav. 153; *Lucas v. Jones*, L. R. 4 Eq. 73; *Smith v. Sopwith*, W. N. 1877, 208), and arrears of interest due upon mortgage (*Alexander v. Brame*, 7 De G. M. & G. 525, 542), cannot be bequeathed for charitable purposes. Such bequests come within the express terms of 9 Geo. II. c. 36, and under the present Act are no doubt included in the words "estate or interest in land." This, of course, does not apply where the charge is not on land: *Walmsley v. Rice*, 1 Times L. R. 251.

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So, also, a legacy secured by mortgage (*White v. Evans*, 4 Ves. 21; and see *House v. Chapman*, *ibid.* 542), or which by the will is made a charge on land (*Arnold v. Chapman*, 1 Ves. Sen. 108; *Currie v. Pye*, 17 Ves. 462; *Leacroft v. Maynard*, 3 Bro. C. C. 233; *Harrison v. Harrison*, 1 R. & M. 71), cannot be given to charity. In *Wilson v. Thomas*, 3 My. & K. 579, the legacy was held not to be charged on land.

Legacy charged on land.

In *Re Watts, Cornford v. Elliott*, 29 Ch. D. 947, it was held that a sum of 800*l.* secured by mortgage on the life interest of a widow lady under her marriage settlement, and a reversionary interest of one of her children, was an interest in land.

Sum secured on life interest.

Unpaid purchase-money for which there is a vendor's lien cannot be bequeathed to charity: *Harrison v. Harrison*, 1 R. & M. 71; *Edwards v. Hall*, 11 Hare, at p. 22; 6 De G. M. & G. 74. In one case, purchase-money of copyholds which the testator had contracted to sell, but of which the sale had not been completed, was held to pass to a charity under a bequest of personal estate: *Middleton v. Spicer*, 1 Bro. C. C. 201; and see this case more fully stated *arguendo* in *Att.-Gen. v. Harley*, 5 Madd. at pp. 325, 326.

Unpaid purchase-money.

An unpaid premium for granting a lease is an interest in land: *Shepherd v. Bertham*, 6 Ch. D. 597; but not if it is really rent: *Brook v. Badley*, L. R. 4 Eq. 106. So, also, is a judgment debt, if and so far as it is a charge on land: *Collinson v. Pater*, 2 R. & M. 344; and see *Jeffries v. Alexander*, 8 H. L. C. 594.

Premium on lease.

Judgment debt.

A bequest of a mere debt is not within the section, even though it may have to be paid out of the proceeds of sale of land.

Simple contract debt.

Thus, in *Re Robson, Emley v. Davidson*, 19 Ch. D. 156, a settlor covenanted to pay 20,000*l.* to trustees, to be held on trust for his wife for life, and then for himself for life, and afterwards as his wife should by will appoint. The wife died first, having exercised the power of appointment in favour of charities. The settlor died afterwards, without having paid the 20,000*l.* Part of his estate consisted of impure personalty, and the pure personalty was insufficient for payment of the 20,000*l.* It was held that the 20,000*l.* was a mere debt due from the settlor's estate, and that, although it would have to be partially discharged out of the proceeds of sale of real estate, it was nevertheless not within 9 Geo. II. c. 36. The charitable bequests were accordingly upheld. See also *Walmsley v. Rice*, 1 Times L. R. 251; *Re Webb, Palmer v. Webb*, 3 *ibid.* 404; and cf. *Jeffries v. Alexander*, 8 H. L. C. 594, and *Fox v. Lownds*, L. R. 19 Eq. 453, *post*, p. 417.

Re Robson, Emley v. Davidson.

It was formerly considered that everything which could be brought within the expressions "impure personalty," or "personalty savouring of realty," fell under the prohibition of the Act.

Impure personalty.

Those expressions did not occur in the Act of 9 Geo. II. c. 36, nor do they

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occur in the present Act, and as their meaning is by no means clear it is difficult to see what advantage is derived from the use of them.

In every case the only question is whether the property attempted to be given to charity was, in the hands of the testator, an interest in land or not. It has sometimes been argued that a gift is good if the charity cannot become possessed of land under it. But this view is erroneous, and it is clear that the nature of the testator's interest is the only point to be considered: see *Ashworth v. Munn*, 15 Ch. D. at pp. 371, 373; *Re Watts*, *Cornford v. Elliott*, 29 Ch. D. at p. 952. See also *Brook v. Badley*, L. R. 3 Ch. 672 (*ante*, pp. 399, 400), which goes to the full length of the doctrine here stated.

Change in
current of
decisions.

In *Myers v. Perigal*, 2 De G. M. & G. at p. 619, Lord St. Leonards said: "It is impossible to deny that the current of modern decisions is against the older cases, and that while there is to be discovered an inclination formerly to carry the provisions of the Act beyond the intention of the legislature, the tendency of modern decisions has been the other way."

Right to
lay chains in
river.

A devise to a charity of a grant from the Crown of a right to lay chains in the Thames has been held void as being an interest in land: *Negus v. Coulter*, Amb. 367.

Shares in
companies.

Where the interest of a shareholder in a company, whether incorporated or not, possessing lands merely as incidental to their undertaking, is limited to the profit to arise from the undertaking, it is not an interest in land, and can be validly bequeathed to charity.

Myers v.
Perigal.
Company
established
by deed.

The leading case on this branch of the subject is *Myers v. Perigal*, 2 De G. M. & G. 599. That was a case of a banking company established under a deed of settlement, and consequently not incorporated. Under that deed the directors had power to purchase or take on lease houses, buildings, or premises for carrying on the business of the company, and to sell the same for the benefit of the company, and such lands, houses, or buildings were for the purposes of the deed to be deemed personal estate and part of the capital of the company, and were to be vested in trustees on such trusts as would effectually secure the object and intention of the deed in relation thereto. It was held by Lord St. Leonards that shares in the company could be validly bequeathed for charitable purposes. "The true way to test it," said his lordship (at p. 620), "would be, to assume that there is real estate of the company vested in the proper persons under the provisions of the partnership deed. Could any of the partners enter upon the lands, or claim any portion of the real estate for his private purposes? Or if there was a house upon the land, could any two or more of the members enter into the occupation of such house? I apprehend they clearly could not; they would have no right to step upon the land; their whole interest in the property of the company is with reference to the shares bought, which represent their proportions of the profits. No incumbrancer of an individual member of the company would have any such right. . . . Upon all principle, therefore, I think it is perfectly clear that this bequest is not within the statute." See also the observations of James, L. J., in *Ashworth v. Munn*, 15 Ch. D. at p. 368.

Company
incorporated
by charter
or Act of
Parliament.

The principles laid down in *Myers v. Perigal*, *supra*, apply with greater force in the case of a company incorporated by charter or Act of Parliament, "where the lands are held by the corporation itself, being a body, in theory at least, distinct from the shareholders of whom the company is composed": see per Lord Cranworth, in *Edwards v. Hall*, 6 De G. M. & G. at p. 93.

Shares in such companies are accordingly not interests in land, and it is immaterial whether the Act incorporating the company does or does not expressly declare the shares to be personal estate: *Edwards v. Hall*, 6 De G. M. & G. 74, overruling *Ware v. Cumberlege*, 20 Beav. 503.

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Thus, shares in the London Gas Light and Coko Co., incorporated by charter (*Thompson v. Thompson*, 1 Coll. 381; *Edwards v. Hall*, *supra*), in the Liverpool Gas Light Co., incorporated by Act of Parliament (*Sparling v. Parker*, 9 Beav. 450), and in a gas company established by deed (*ibid.*), have all been held capable of being bequeathed to a charity. Similarly, shares in the London Dock Co. (*Hilton v. Giraud*, 1 De G. & Sm. 183; *Pieschel v. Paris*, 2 S. & S. 384), and in the East and West India Dock Co. (*ibid.*), and St. Katherine's Dock Stock (*Walker v. Milne*, 11 Beav. 507), all these dock companies having been incorporated by statute; shares in a dock company established by deed (*Sparling v. Parker*, 9 Beav. 450); stock and shares in various canal companies (*Walker v. Milne*, 11 Beav. 507; *Edwards v. Hall*, 6 De G. M. & G. 74; *Re Langham's Trust*, 10 Hare, 446. *Tomlinson v. Tomlinson*, 9 Beav. 459, and *Ware v. Cumberlege*, 20 Beav. 503, in both of which a contrary decision was come to, are now overruled; and see *Howse v. Chapman*, 4 Ves. 542, where Bath Navigation shares were held within the Act), in waterworks companies (*Ashton v. Lord Langdale*, 4 De G. & Sm. 402; *Edwards v. Hall*, *supra*), banking companies (*Myers v. Perigal*, 2 De G. M. & G. 599; *Ashton v. Lord Langdale*, *supra*), and railway companies (*Ashton v. Lord Langdale*, *supra*), have all been held capable of being bequeathed for charitable purposes. So, also, scrip shares in a projected railway company: *Ashton v. Lord Langdale*, *supra*.

Gas, water,
and railway
companies,
&c.

And where a railway company had leased its railway to another company, so that the profits earned by the first company consisted merely of the rent received under the lease, it was held that shares in it were not within the Act: *Linley v. Taylor*, 1 Giff. 67; *S. C.* on appeal, *nom. Taylor v. Linley*, 2 De G. F. & J. 84.

In *Entwistle v. Davis*, L. R. 4 Eq. 272, the shares in question were shares in the British Land Co., Limited, and shares in the National Freehold Land Society. The British Land Co. was established by deed of settlement, and its business was the purchase and improvement of lands. The National Freehold Land Society was a benefit building society established pursuant to 6 & 7 Will. IV. c. 32, and its object was to raise by subscription a fund out of which any member should receive the amount of his share for the erection or purchase of a dwelling-house or other real or leasehold estate. It was held that shares of neither of these companies were within the statute.

Land
company.

Shares in the New River Co. are, however, real estate: *Drybutter v. Bartholomew*, 2 P. Wms. 127; *Davall v. New River Co.*, 3 De G. & Sm. 394.

Shares in
New River
Co.

It is expressly provided by sect. 22 of the Companies Act, 1862 (25 & 26 Vict. c. 89), that shares and other interests of members in companies registered under that Act are personal estate and not of the nature of real estate.

Joint stock
companies.

Shares in a mining company conducted on the cost-book principle are not ordinarily within the statute; for, as a rule, the mines are vested in trustees for the purpose of the undertaking generally, and the interest of the shareholders is limited to the profits derived from working the mine: *Hayter v. Tucker*, 4 K. & J. 243; and cf. *Watson v. Spratley*, 10 Ex. 222. See, however, *Morris v. Glynn*, 27 Beav. 218, where a contrary decision was

Cost-book
mining
companies.

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arrived at; this case, however, is scarcely consistent with *Myers v. Perigal*, and other cases cited *ante*, p. 402, and was disapproved of by Wood, V.-C., in *Entwistle v. Davis*, L. R. 4 Eq. at p. 275. See, also, *MacSwiney on Mines, Quarries, and Minerals*, pp. 464, 475.

The case would, however, be different if, as sometimes occurs, the mines were vested in the trustees not for the purpose of the undertaking generally, but for the individual adventurers in proportion to their shares: *Hayter v. Tucker*, 4 K. & J. at p. 251.

Debentures.

In the case of debentures the rule is this: a charge on the profits of a going concern is not an interest in land: *Attree v. Hawe*, 9 Ch. D. 337; *Re Watts, Cornford v. Elliott*, 29 Ch. D. at pp. 951, 952. Where the debenture-holder cannot wind up the corporation to enforce his charge, and cannot in any manner attach the land, but has merely a right to a share in the profits, the case falls within the principles which have been stated (*ante*, p. 402) to apply in the case of shares.

Railway
debentures,
&c.

It is now settled that mortgage debentures made by a railway company in the form given in Sched. C. to the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), do not give the holder a specific charge upon the land or property of the company, but only on the profits and earnings arising from the company's undertaking: *Gardner v. L. C. & D. Ry. Co.*, L. R. 2 Ch. 201. Similar decisions had previously been arrived at with regard to railway debentures created under other Acts: *Doe v. St. Helens Ry. Co.*, 2 Q. B. 364; *Hart v. Eastern Union Ry. Co.*, 7 Ex. 246.

It has accordingly been held that such debentures are not interests in land, and can be validly bequeathed to charity: *Re Mitchell's Estate*, 6 Ch. D. 655; *Attree v. Hawe*, 9 Ch. D. 337. See also *Walker v. Milne*, 11 Beav. 507; *Myers v. Perigal*, 16 Sim. 533; *Ashton v. Lord Langdale*, 4 De G. & Sm. 402.

The case is, of course, the same with debentures created under the Companies Clauses Consolidation Act, 1845, by any other company, as, for instance, a waterworks company: *Holdsworth v. Davenport*, 3 Ch. D. 185. *Chandler v. Howell*, 4 Ch. D. 651, in which a different decision was come to, must be regarded as overruled.

Debenture
being mort-
gage of land.
Observations
of James, L. J.

The case would be altogether different if the debentures were an actual mortgage on the land, and not merely a charge on the earnings.

The questions which arise in cases of this kind were thus dealt with by James, L. J., in *Attree v. Hawe*, 9 Ch. D. at pp. 346, 347: "Now, how, dealing with the matter on principle, does the case of a railway debenture stand? Previously . . . it was very difficult to say that it was not a charge or incumbrance on land within the words of the statute. There are in this country a great many railways which are private and individual property. All, or almost all, the Canal Acts, passed about the end of the last century and the beginning of this, contained powers enabling the proprietors of any mine or work within a certain distance of the canal to make a railway or tramway communication with the canal, the same to be open to the public on the payment of the same tolls as were taken by the canal itself. Now, it is clear that a mortgage or debenture, in the very words of the ordinary railway debenture, given by the owner of such a railway, would, in fact, be precisely similar to a mortgage on land." His Lordship then proceeded to distinguish between a debenture "made under statutory authority by a Parliamentary body established and empowered to make, maintain, and manage for public

convenience a great public highway," and a similar charge on a private owner's railway; and he disapproved of the case of *Ashton v. Lord Langdale* (4 De G. & Sm. 402), where it was held that a railway debenture was an interest in land within 9 Geo. II. c. 36.

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Nor is railway debenture stock, or debenture stock of other companies, created under the Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), Part III., an interest in or charge upon land. It is merely a right to a perpetual annuity payable out of the concern, and may therefore be validly bequeathed for charitable purposes: *Attree v. Hawe*, 9 Ch. D. 337. Debenture stock.

Policies of assurance, by which the directors engage "to pay out of the funds," or that "the funds shall be liable," or "that a share of the funds shall be paid," are not interests in land, although the assets of the company consist partly of real estate. And the case is the same, although the effect of the policy is to make the assured a member of the company: *March v. Att.-Gen.*, 5 Beav. 433. Policies of assurance.

A private partnership occupies a different position. Where the partnership property includes land, the share of a partner in the partnership is an interest in land which cannot be bequeathed to charity: *Ashworth v. Munn*, 15 Ch. D. 363; and see *Baxter v. Brown*, 7 M. & Gr. 198. For although the share of each partner is not a share in any specific asset, or in any specific part of the assets, real or personal, yet the amount due to each partner in respect of his share is a charge or incumbrance on the land forming part of the partnership assets: *Ashworth v. Munn*, *supra*, at pp. 369, 370, per James, L. J. In *Raymond v. Lakeman*, 16 W. R. 67, it was held that a share in a partnership, the property of which consisted partly of leaseholds, could be bequeathed to a charity. And see *Forbes v. Steven*, L. R. 10 Eq. at p. 189. Private partnership.

It was held in *Knapp v. Williams*, 4 Ves. 430, n., that a mortgage of turnpike tolls was an interest affecting land within 9 Geo. II. c. 36. See also *Att.-Gen. v. Meyrick*, 2 Ves. Sen. 44; *Earl Stafford v. Buckley*, *ibid.* 171. *Knapp v. Williams* was followed by *Ashton v. Lord Langdale*, 4 De G. & Sm. 402; and, as regards harbour tolls, by *Ion v. Ashton*, 28 Beav. 379; and, as regards dock tolls, by *Alexander v. Brame* (No. 2), 30 Beav. 153; and see *Tyrrell v. Whinfield*, W. N. 1877, 99. Turnpike and harbour tolls, &c.

It is not clear from the report what the security in the case of *Knapp v. Williams* really was. Lord St. Leonards said, in *Myers v. Perigal*, 2 De G. M. & G. at p. 619, that there was "an actual assignment of the real property on which the tolls were secured." But this seems doubtful: see *Re Christmas, Martin v. Lacon*, 33 Ch. D. at p. 340.

The law was reviewed by the Court of Appeal in *Re Christmas, Martin v. Lacon*, 33 Ch. D. 332. In that case the Great Yarmouth Port and Haven Commissioners had power under a local Act to levy certain duties on all vessels entering or leaving the haven, and on all vessels loading or unloading in Yarmouth Roads, and also certain duties on goods imported and exported. They had also power to mortgage, assign, and charge the duties as a security for money borrowed. There were also vested in the Commissioners, under their Act, certain warehouses, workshops, and other buildings, and the piers, breakwaters, docks, &c. belonging to the haven. By the form of bond upon which the Commissioners were authorized to borrow, they were expressed to assign such proportion of the above-mentioned duties as the sum secured by the particular bond bore to the whole sum borrowed. It was held that such a bond was not an interest in land within 9 Geo. II. c. 36. Re Christmas, Martin v. Lacon.

Cotton, L. J., said (at p. 339): "In my opinion. . . you cannot

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possibly say that this duty is a hereditament within the meaning of the section. It is not in any way inseparably connected with, and certainly not in any way issuing out of, any land. It is a duty which is to be collected by the Commissioners on vessels which may come into the roads or the haven, or in respect of goods which are landed or exported from the haven, or from or to vessels which are in the roads. It is very true that the Commissioners have duties to perform, and duties connected with land, and probably that is the reason why the right to claim these tolls was vested in them. But that does not make the tolls in any way an incorporeal hereditament so connected with the land as to be within the mischief of the statute, or within the meaning of the statute.

"Then is it in any way an interest in land? What I have already said answers that. It is not connected with or incident to the land, but it is that which is granted to the Commissioners, who have duties imposed upon them connected with the land of the haven. In my opinion, therefore, if we come to look at this case severed from decisions, it cannot be said that these bonds which the testator had were either an hereditament within the meaning of the statute or an interest in land of any kind whatsoever."

Knapp v. Williams, &c.
not overruled.

It is clear that the last-mentioned case did not overrule *Knapp v. Williams* and *Ion v. Ashton*. If the statement of Lord St. Leonards, above cited, with regard to *Knapp v. Williams* is accurate, the decision could not have been otherwise than it was, for a mortgage on land must undoubtedly be an interest in land. If, on the other hand, that statement is inaccurate, and the mortgage in fact comprised the tolls only, it may still be that the tolls were so intimately connected with land as to be an incorporeal hereditament within the statute. With regard to this, Cotton, L. J., said (*Re Christmas, Martin v. Lacon*, 33 Ch. D. at p. 341): "In that case (*Knapp v. Williams*), he (Lord Loughborough) considered that tolls for the use of a turnpike road, and for the use of what was certainly vested in the trustees, of turnpikes and toll-houses, might be considered as so far connected with the land as to be an incorporeal hereditament within the statute. Therefore that decision does not apply to the present case, where the duties are of a very different nature." (See also *Re David, Buckley v. Royal National Lifeboat Institution*, 41 Ch. D. 168).

And his Lordship added, with regard to *Ion v. Ashton*: "There it was held that dock tolls were within the statute, and that they could not be given to charitable uses; but the Master of the Rolls expressly decided upon the authority of *Knapp v. Williams*. It may be that those dock tolls were so connected with the land as to come within the principle of *Knapp v. Williams*; but if he only decided upon the authority of the decision in *Knapp v. Williams*, I think he was wrong in doing so."

Each case
decided on its
merits.

Charge
merely on
tolls.

The result is that no invariable rule can be laid down with regard to these tolls, but each case must be decided upon its own merits.

It is plain from *Re Christmas, Martin v. Lacon, supra*, that a charge merely on tolls, whether turnpike, harbour, or dock tolls, is not either a hereditament or an interest in land within the Act. See also *Re Hallett, Howarth v. Massey*, 5 Times L. R. 285; *Re David, Buckley v. Royal National Lifeboat Institution*, 41 Ch. D. 168.

Tolls in-
cidental to in-
come arising
from land.

If, on the other hand, the trustees or commissioners creating the mortgage have real estate vested in them, and the privilege of receiving tolls is an incident or addition to the income and profit arising from the land, it may itself be a "hereditament" or "interest in land" within the Act.

This has been held to be the case with lighthouse tolls: *Att.-Gen. v. Jones*, 1 Mac. & G. 574. See also *Walmsey v. Rice*, 1 Times L. R. 251. So, also, in the case of bridge tolls: *Re David, Buckley v. Royal National Lifeboat Institution*, 41 Ch. D. 168, where the securities in question were Swansea Harbour Bonds.

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The distinction between the two classes of cases is thus stated in *Att.-Gen. v. Jones*, *supra*, at p. 589:—"The question then is, the house (*i. e.*, the lighthouse) being clearly real property, for there is no doubt about that, whether the privilege of receiving tolls on condition of keeping up the light is not an incident or addition to the income and the profit arising from the house, or whether it be a totally distinct and independent personal franchise, which in that case would be personalty, and not realty." See also *Attree v. Howe*, 9 Ch. D. at p. 350; *Re Christmas, Martin v. Lacon*, 33 Ch. D. at p. 343; *Re David, Buckley v. Royal National Lifeboat Institution*, *supra*, at p. 177.

Distinction
stated in
Att.-Gen. v.
Jones.

The next cases requiring to be noticed are those relating to mortgages of rates.

Mortgages of
rates.

The leading case of this kind is *Finch v. Squire*, 10 Ves. 41, in which it was held that a mortgage of poor rates and county rates was an interest in land within 9 Geo. II. c. 36. Grant, M. R., said (at pp. 43, 44): "It is true they (the rates) are not raised out of the land only, but by far the greatest part is raised out of the land; for the land pays so much rent in consequence of the occupier being liable to the poor rates: otherwise the landlord would have more rent. So, all that is paid in respect of the land is got from the land, as much as rent arises out of the land itself. It is more properly to be said to arise out of land, because it is in respect of the occupation, than the tolls for the mere privilege of passing;" and he held that there was no solid distinction between that case and *Knapp v. Williams*, *ante*, p. 405. In *Re Harris, Jacson v. Governors of Queen Anne's Bounty*, 15 Ch. D. at p. 565, Jessel, M. R., said that "the doctrine of *Finch v. Squire* was that, inasmuch as the rates were chargeable in respect of the ownership of the land and could be levied by distress, they were like rent."

Finch v.
Squire.

Finch v. Squire was followed in *Thornton v. Kempson*, Kay, 592, where Wood, V.-C., held that a mortgage of rates authorized by Act of Parliament to be levied upon the occupiers of houses in a town was within the statute, and incapable of being bequeathed to a charity. See, also, *Att.-Gen. v. Merryck*, 2 Ves. Sen. 44; *Earl Stafford v. Buckley*, *ibid.* 171; *Rex v. Bates*, 3 Price, 341.

Thornton v.
Kempson.

In *Re Harris, Jacson v. Governors of Queen Anne's Bounty*, 15 Ch. D. 561, the question was with regard to money secured by bond upon police rates. Under the Acts applicable in that case (2 & 3 Vict. c. 93; 3 & 4 Vict. c. 88; and 7 & 8 Vict. c. 33) the bond was given by the justices, but the guardians of the union, and not the justices, were the authorities to levy the rate: the justices, therefore, could only pledge moneys to be received by them from other persons, so that the security could not be regarded as an interest in land.

Re Harris.

Police rates.

This case is distinguishable from and quite consistent with *Finch v. Squire*, and although Jessel, M. R., expressed an opinion that *Attree v. Howe*, 9 Ch. D. 337, might be considered to have overruled *Finch v. Squire*, yet he certainly did not decide that it had in fact done so.

The next case is *Jervis v. Lawrence*, 22 Ch. D. 202. There a metropolitan vestry, in whom were vested the powers of commissioners under a suburban Improvement Act, were empowered to rate occupiers and borrow money on

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the security of the rates. In that case the vestry were the persons who actually levied the rates; and payment could be enforced either by action or distress. It was held by Bacon, V.-C., that a mortgage of such rates was not an interest in land. The Vice-Chancellor said (at pp. 211, 212): "Now, what are the means of enforcing that contribution in the shape of rates? It may be enforced either by bringing an action against an owner or occupier who refuses or neglects to pay, or by issuing a distress warrant to levy upon his goods and chattels for the amount demanded. How does that affect the land? Not in any degree. The land cannot be sold by the incumbrancers, if the commissioners can be called incumbrancers, and they cannot affect it or touch it." He also expressed decisively (see pp. 214, 215, 217) his opinion that *Finch v. Squire* had been overruled.

Finch v. Squire not overruled.

Finch v. Squire has not, however, been overruled. In the recent case of *Payne v. Esdaile*, 13 App. Cas. at p. 628, *Finch v. Squire* was mentioned without any suggestion that its authority had been shaken. And it has been recently followed by Kay, J., in *Re Gange, Mummery v. Gange*, Times, 19 March, 1889.

State of authorities.

It cannot be said that the authorities on this subject are in a satisfactory state, and it may be regretted that advantage was not taken of the Mortmain and Charitable Uses Act, 1888, to introduce some simple principle which might govern all cases of this kind: see *Re David, Buckley v. Royal National Lifeboat Institution*, 41 Ch. D. at p. 175.

Result of authorities.

The result of the authorities, however, as they stand at present, seems to be this. The case of *Finch v. Squire* not having been overruled, must be taken to be good law. *Re Harris* is not inconsistent with *Finch v. Squire*, and is also good law. On the other hand, it is difficult to see how *Jervis v. Lawrence* can be reconciled with *Finch v. Squire*, and, indeed, the judgment proceeded upon the ground that *Finch v. Squire* had been overruled. The authority of *Jervis v. Lawrence* would, therefore, seem to be doubtful.

Mortgages of rates, therefore, are interests in land, and cannot be bequeathed to charity. The only exception is where such special circumstances are present as were found in *Re Harris*, that the persons who effect the charge are not those whose duty it is to levy the rates.

That this is the true view is supported by the observations of Cotton, L. J., in *Re Watts, Cornford v. Elliott*, 29 Ch. D. at p. 952; and in *Re Christmas, Martin v. Lacon*, 33 Ch. D. at p. 342.

Improvement bonds, &c. creating charge on land.

The principles applicable in the case of corporation or improvement bonds would seem to be similar.

Where the charge created by such bonds is on the lands and general property of the corporation as well as on the rates, they are an interest in land, and cannot be bequeathed to charity: *Howse v. Chapman*, 4 Ves. 542; *Re v. Winstanley*, 8 Price, 180; *Walmsley v. Rice*, 1 Times L. R. 251; *Re Hatton, Robson v. Gibbs*, 4 *ibid.* 311; *Re Hallett, Howarth v. Massey*, 5 *ibid.* 285, with regard to Leicester Corporation bonds; *Re Thompson, Bedford v. Teale*, Times, 17 Jan. 1889, with regard to Bradford Corporation bonds.

The same conclusion was come to with regard to bonds issued under the Dover Corporation Sea Defences Act, 1877: *Re Gange, Mummery v. Gange*, Times, 19 March, 1889.

Bond creating merely charge on rates.

It has, however, been held that where the charge created by the bond is merely upon the general district rates it is not an interest in land: *Re Hallett, Howarth v. Massey*, 5 Times L. R. 285; *Re Thompson, Bedford v. Teale*, Times, 17 Jan. 1889. See also *Bunting v. Marriott*, 19 Beav. 163, where

it was held that Tothill Fields Improvement bonds could be bequeathed to charity.

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A bond of the Mersey Docks and Harbour Board, which did not in terms impose any charge on land, but created merely an obligation by the Dock Corporation, was held not to be an interest in land: *Re Hallett, Howarth v. Massey*, 5 Times L. R. 285.

Bond merely creating obligation.

East India Stock is not within the section: *Att.-Gen. v. Giles*, 5 L. J. Ch. 44.

East India Stock.

Leicester Corporation Three and a Half Per Cent. Redeemable Stock was held to be an interest in land, it being considered that the money had really been lent to the Corporation not to be paid off before a certain time, and the Act under which the Corporation Stock was issued providing that it should be charged on all the property of the Corporation, including land: *Re Hallett, Howarth v. Massey, supra*.

Corporation stock.

It has also been held that Metropolitan Board of Works Consolidated Stock cannot be bequeathed to charity: *Cluff v. Cluff*, 2 Ch. D. 222.

Stock of Metropolitan Board of Works.

Money to be laid out in Land.

A bequest to a charity of money to be laid out in the purchase of land is bad, as, for instance, a bequest to enable charity trustees to complete a purchase of land: *Corbyn v. French*, 4 Ves. at p. 431; *Att.-Gen. v. Heartwell*, 2 Eden, 234.

Bequest to be laid out in land.

A bequest for the construction of a well and the erection of a public pump was held void: *Kirkmann v. Lewis*, 38 L. J. Ch. 570.

The case is the same where the direction to lay out in land is not express, but is implied from the words of the will, or follows necessarily from the nature and objects of the charity to which the bequest is made: *Pritchard v. Arbouin*, 3 Russ. 456.

Implied direction to lay out in land.

In cases of this kind the question is, what was the testator's intention. If the intention was that land should be purchased, the gift is void. If, on the other hand, there was no such intention, then there is nothing in the bequest repugnant to the Act.

Question of intention.

Primâ facie, a direction that a bequest shall be laid out in erecting a building is construed to include a direction to purchase the land on which the building shall be erected: *Att.-Gen. v. Tyndall*, Amb. 614; *Pelham v. Anderson*, 1 Bro. C. C. 444, n.; *Att.-Gen. v. Nash*, 3 *ibid.* 588; *Foy v. Foy*, 1 Cox, 163; *Att.-Gen. v. Williams*, 2 Cox, 387; *Chapman v. Brown*, 6 Ves. 404; *Att.-Gen. v. Parsons*, 8 Ves. 186; *Att.-Gen. v. Davies*, 9 Ves. at p. 544; *Pritchard v. Arbouin*, 3 Russ. at p. 458; *Smith v. Oliver*, 11 Beav. 481; *Trye v. Corporation of Gloucester*, 14 Beav. 173; *Giblett v. Hobson*, 3 My. & K. 517; *Martin v. Wellsted*, 18 Jur. 941; *Re Lee's Trusts*, 21 W. R. 168; *Re Watmough's Trusts*, L. R. 8 Eq. 272; *Hawkins v. Allen*, 10 *ibid.* 246; *Pratt v. Harvey*, 12 *ibid.* 544; *Re Cox, Cox v. Davie*, 7 Ch. D. 204; *Re Jones, Jones v. Williams*, 2 Times L. R. 544; *Re Taylor, Martin v. Freeman*, 4 *ibid.* 302.

"Build" implies purchase.

A similar meaning is *primâ facie* attributed to a direction to "establish": *Tatham v. Drummond*, 4 De G. J. & S. 484; *Att.-Gen. v. Hull*, 9 Hare, 647; *Att.-Gen. v. Hodgson*, 15 Sim. 146; *Longstaff v. Rennison*, 1 Dr. 28; *Re Clancy*, 16 Beav. 295; *Dent v. Allcroft*, 30 Beav. 335; *Dunn v. Bownas*, 1 K. & J. 596; and see *Att.-Gen. v. Williams*, 2 Cox, 387.

"Establish" implies purchase.

In *Tatham v. Drummond, supra*, a bequest to a charitable society to be

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applied as the Committee should "think best, towards the establishment in the neighbourhood of London or Westminster of slaughter-houses away from the densely-populated places in which they are now situated, and for the relief of and protection from cruelty to the animals taken to be slaughtered," was held void; and Lord Westbury, in giving judgment, said: "The word 'establishment' involves the idea of putting the charity on a permanent footing. It points to the purchase of sites of land, and the erection of permanent buildings, and it cannot be doubted that if there were no Statute of Mortmain, a bequest to establish a charity, such as a school or a hospital, in any parish or district would be carried into effect by the purchase of land and the erection of buildings thereon."

Hawkins v. Allen.

In *Hawkins v. Allen*, L. R. 10 Eq. 246, a lady gave a cheque for 5,000*l.*, to be laid out in the erection, establishment, and support of a hospital. A declaration of trust was executed, and a few days afterwards the donor died. It was held that the donor having died within twelve months after the deed, and the acquisition of land not being excluded, the gift was void.

"Found" implies purchase.

A direction to "found" also *prima facie* indicates an intention that land shall be purchased: *Hopkins v. Phillips*, 3 Giff. 182; *Re Hedgman, Morley v. Croxon*, 8 Ch. D. 156. But a gift to "found a charitable endowment" has been upheld: *Salisbury v. Denton*, 3 K. & J. 529. So, also, a gift to further the preaching and teaching of certain doctrines: *Re Moseley, Moseley v. Moseley*, 4 Times L. R. 301.

Not "endow" or "support."

But such an intention is not implied by the use of the word "endow" or "support."

Thus, a bequest to support or endow a school is good: *Re Hedyman, Morley v. Croxon*, 8 Ch. D. 156; *Re Holburne, Coates v. Mackillop*, 53 L. T. N. S. 212; see *Kirkbank v. Hudson*, 7 Price, 221.

So, also, a gift for the endowment of an existing, or even a future church or chapel: *Edwards v. Hall*, 6 De G. M. & G. 74; *Sinnett v. Herbert*, L. R. 7 Ch. 232; see *Re Adams, Harle v. Adams*, 4 Times L. R. 757.

Test.

In these cases the test is to see how, independently of the Act, the Court would direct the trust to be executed: *Att.-Gen. v. Williams*, 2 Cox, 387; *Edwards v. Hall*, 11 Hare, at p. 16.

Land obtainable elsewhere.

If the testator's intention was that land should be purchased, the gift is void, notwithstanding that the necessary land may be obtained by other means: *Att.-Gen. v. Tyndall*, Amb. 614; *Att.-Gen. v. Nash*, 3 Bro. C. C. 588; *Giblett v. Hobson*, 3 My. & K. 517; *Dunn v. Bownas*, 1 K. & J. 596. It was formerly held that the gift was good if the trustees could get a piece of ground given to them without the necessity of purchasing it: *Vaughan v. Farrer*, 2 Ves. Sen. 182; *Att.-Gen. v. Bowles*, *ibid.* 547. But the contrary is now established.

Even where the charity to which money is bequeathed "towards building" possesses land upon which the intended buildings may be erected, the gift is void unless the testator precludes the application of the legacy in the purchase of other land: *Att.-Gen. v. Hyde*, Amb. 751; *Giblett v. Hobson*, 3 My. & K. 517. In *Booth v. Carter*, L. R. 3 Eq. 757, a contrary decision was arrived at, but that case has not been followed: *Re Watmough's Trusts*, L. R. 8 Eq. 272; *Re Cox, Cox v. Davie*, 7 Ch. D. 204.

Direction that legacy shall not be paid

The bequest is not rendered valid by a direction that the legacy shall not be paid until the building has been commenced: *Pratt v. Harvey*, L. R. 12 Eq. 544; *Re Jones; Jones v. Williams*, 2 Times L. R. 544. Otherwise, how-

ever, where the church is to be finished and consecrated before the legacy is paid: *Dixon v. Butler*, 3 Y. & C. Ex. at pp. 681, 682.

Nor is it rendered valid by the fact that there is a direction that until an eligible purchase can be made the money shall be invested in an unobjectionable manner: *Grieves v. Case*, 4 Bro. C. C. 67; *English v. Orde*, Duke, ed. by Bridg. p. 432; *Pritchard v. Arbouin*, 3 Russ. 456; *Mann v. Burlingham*, 1 Keen, 235, in effect overruling *Grimmett v. Grimmett*, Amb. 210; and see *Att.-Gen. v. Goddard*, T. & R. 348.

A bequest for building, establishing, or founding is not, however, necessarily void: see *Philpott v. Governors of St. George's Hospital*, 6 H. L. C. at pp. 351, 352, overruling *Att.-Gen. v. Bowles*, 3 Atk. 806. If the testator manifests an intention that the bequest shall not be laid out in purchasing land, it is good. The authorities lay down that this intention may be shown in one of two ways. The testator may either point to the use of land already in mortmain for the site of the building; or he may direct either expressly or by clear implication that no part of the fund shall be applied in purchasing a site: *Att.-Gen. v. Davies*, 9 Ves. 535; *Pritchard v. Arbouin*, 3 Russ. 456; *Mather v. Scott*, 2 Keen, 172; *Re Watmough's Trusts*, L. R. 8 Eq. 272; *Hawkins v. Allen*, 10 *ibid.* 246; *Pratt v. Harvey*, 12 *ibid.* 544.

A bequest for the erection (*Brodie v. Duke of Chandos*, 1 Bro. C. C. 444 n.; *Att.-Gen. v. Bishop of Oxford*, *ibid.*; *Glubb v. Att.-Gen.*, Amb. 373; *Att.-Gen. v. Parsons*, 8 Ves. 186; *Att.-Gen. v. Munby*, 1 Mer. 327; *Fisher v. Brierley*, 1 De G. F. & J. 643; *Sewell v. Crewe-Read*, L. R. 3 Eq. 60) or rebuilding, repair, or improvement (*Harris v. Barnes*, Amb. 651; *Att.-Gen. v. Bishop of Chester*, 1 Bro. C. C. 444; *Att.-Gen. v. Parsons*, *supra*; *Shaw v. Pickthall*, Dan. 92; *Ingleby v. Dobson*, 4 Russ. 342), of buildings upon land already in mortmain is valid.

Consequently if the testator clearly points to the use of land already in mortmain as a site for the intended building the gift is good: *Att.-Gen. v. Davies*, 9 Ves. 535; *Pritchard v. Arbouin*, 3 Russ. 456; *Mather v. Scott*, 2 Keen, 172; *Trye v. Corporation of Gloucester*, 14 Beav. 173; *Giblett v. Hobson*, 3 My. & K. 517.

Where there was a bequest by an incumbent to be laid out in building a parsonage, it was held that the testator intended the building to be upon glebe belonging to the living: *Sewell v. Crewe-Read*, L. R. 3 Eq. 60; and see *Glubb v. Att.-Gen.*, Amb. 373.

So also a gift for building a parsonage in connection with a church was upheld, there having been a piece of land set apart for a parsonage ever since the church was consecrated: *Cresswell v. Cresswell*, L. R. 6 Eq. 69. See, however, *Re Watmough's Trusts*, L. R. 8 Eq. 272; *Pratt v. Harvey*, L. R. 12 Eq. 544; *Re Cox*, *Cox v. Davie*, 7 Ch. D. 204.

And a bequest for the enlargement of a parish church was held good: *Re Hawkin's Trusts*, 33 Beav. 570.

A gift to erect buildings on land validly conveyed to charity during life by deed duly enrolled under this section is good: *Fisher v. Brierley*, 10 H. L. C. 159. But this of course is not so where the deed was void under the section: *Morris v. Owen*, W. N. 1875, 134; *Re Taylor*, *Martin v. Freeman*, 58 L. T. N. S. 538.

The bequest is also valid where the testator shows a clear intention that no part of the money shall be applied in the acquisition of land.

Thus, the testator may expressly prohibit the application of any part of

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till building commenced.
Or for intermediate investment.

Bequest for building, &c., may be good.

Erection or repair of buildings on land already in mortmain.

Where testator points to land in mortmain.

Gift to erect buildings on land conveyed during life.

Money not to be applied in acquiring land.

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the fund in purchasing land : *Henshaw v. Atkinson*, 3 Madd. 306; *Philpott v. Governors of St. George's Hospital*, 6 H. L. C. 338; *Cawood v. Thompson*, 1 Sm. & G. 409. Or he may direct a charitable institution to be established "in such manner as not to violate the Mortmain Acts": *Biscoe v. Jackson*, 35 Ch. D. 460. Or, again, he may direct the trustees to have regard to the application of the fund being consistent with the laws then in force: *Dent v. Allcroft*, 30 Beav. 335; *Re Ludlow's Trusts*, W. N. 1870, 218. In any of these cases the gift is good.

Implied intention.

The intention need not, however, be express. It is sufficient if it can be clearly gathered from the general scope and construction of the will: *Att.-Gen. v. Williams*, 2 Cox, 387; *Hill v. Jones*, 2 W. R. 657.

Extrinsic evidence.

And evidence is admissible to show that the testator contemplated building on land already in mortmain or to be acquired by other means than the application of the legacy: *Att.-Gen. v. Hyde*, Amb. 751; *Giblett v. Hobson*, 3 My. & K. 517; *Cresswell v. Cresswell*, L. R. 6 Eq. 69.

Bequest for building if land should be given.

A bequest of money to be employed in building, if land shall at some future time be given, is valid. Thus, in *Philpott v. Governors of St. George's Hospital* (6 H. L. C. 338), a testator devised to one Scott, his heirs and assigns, a piece of land in Newland, and after declaring that he had contemplated erecting and endowing almshouses either upon some part of his estate or elsewhere in Newland aforesaid, in case he died without effecting such object, and any persons or person should within twelve months after his decease, at their, his, or her expense, purchase or give a suitable piece of land in Newland aforesaid, as a site for such almshouses, he empowered and directed his trustees to pay to the trustees of the said intended charity the sum of 60,000*l.*, to be devoted to the purposes of the charity, but not to be applied in or towards the purchase of any lands for the purpose of the said charity. The House of Lords held the bequest to be valid. *Trye v. Corporation of Gloucester*, 14 Beav. 173, so far as it decided the contrary, must be considered to be overruled. See also *Henshaw v. Atkinson*, 3 Madd. 306; *Cawood v. Thompson*, 1 Sm. & G. 409; *Dixon v. Butler*, 3 Y. & C. Ex. 677; *Chamberlayne v. Brockett*, L. R. 8 Ch. 206; *Re White's Trusts*, 51 L. J. Ch. 830.

So also a bequest to build almshouses when a proper site can be obtained is valid: *Re White's Trusts*, 33 Ch. D. 449.

But a request to the trustees of the sum bequeathed that they would ask for a grant of land for the purposes of the building has been held not to be a sufficient indication of an intention to exclude the purchase of land: *Mather v. Scott*, 2 Keen, 172.

Bequest to charitable institution on condition of furnishing land invalid.

So, also, a legacy to the trustees of a charitable institution, on condition of their providing land for building houses to be dedicated to charity, has been held void, "for it is an absurd distinction, that a testator shall not give land to a charity, but he may give money, in consideration of another's giving land for a charity": *Att.-Gen. v. Davies*, 9 Ves. 535, 543; and see *Dunn v. Bownas*, 1 K. & J. at p. 602.

Income to be applied in "establishing."

In some cases the fact that the income of a fund is directed to be applied in "establishing" has been held to exclude an intention that land shall be purchased.

Thus where there was a direction to apply the dividends of stock "for and towards establishing a school," the gift was upheld: *Att.-Gen. v. Williams*, 4 Bro. C. C. 526; and see *Martin v. Wellstead*, 23 L. J. Ch. 927. So, also,

bequests of annual sums to establish a school (*Hartshorne v. Nicholson*, 26 Beav. 58), for "a perpetual endowment or maintenance for two schools" (*Kirkbank v. Hudson*, 7 Price, 212), for the endowment of existing churches and chapels (*Edwards v. Hall*, 6 De G. M. & G. 74), have been held good.

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A similar decision was arrived at where the income of a sum of money was bequeathed for "providing" a school-house (*Johnston v. Suann*, 3 Madd. 457; and see *Crafton v. Frith*, 4 De G. & Sm. 237); and even where there was a direction that the income should be applied in the purchase or rental of an appropriate building: *Davenport v. Mortimer*, 3 Jur. 287.

Where the institution intended to be established or provided for is one which does not require the possession of land, the gift is good: *Baldwin v. Baldwin* (No. 1), 22 Beav. 413, where the gift was to provide stipends and annuities for indigent persons, with provisions as to the management and conduct of the "institution." See, also, *University of London v. Yarrow*, 1 De G. & J. at p. 81, per Lord Cranworth.

Legacy to establish institution not requiring land.

The bequest is also supported in cases where a discretion is given to the trustees to apply the fund either in an unobjectionable manner or in a manner repugnant to the section. In such a case the Court presumes that the trustees will apply it in accordance with law.

Discretion as to application.

A bequest of stock to a municipal corporation to be "applied in such manner and for such purposes as the said corporation shall judge to be most for the benefit and ornament of the said town," was held good: *Mayor of Faversham v. Ryder*, 5 De G. M. & G. 350; *Salisbury v. Denton*, 3 K. & J. 529. See also *Baldwin v. Baldwin* (No. 2), 22 Beav. 419. Where a testator directed trustees to lay out money for charitable purposes upon land, either in England or in Ireland (in the last of which countries the Statute of Mortmain is not in force), inasmuch as the trustees had an option to apply the fund in a lawful manner in one place, the bequest was held good: *University of London v. Yarrow*, 1 De G. & J. 72. In this case (24 Beav. 472) Romilly, M. R., declined to insert any declaration in the decree interfering with the option of the trustees. But in *Carter v. Green*, 3 K. & J. at p. 607, Wood, V.-C., inserted a declaration in his decree as to what would be an illegal application of the funds by trustees in exercise of their option.

Discretion as to application given to trustees.

Alternative bequest.

The same result follows where the bequest is for erecting or endowing a church (*Edwards v. Hall*, 6 De G. M. & G. 74; *Sinnett v. Herbert*, L. R. 7 Ch. 232), endowing, maintaining, and keeping up a school at a particular place, or otherwise for school purposes (*Dent v. Allcroft*, 30 Beav. 335), or "to support or found a school": *Re Hedgman*, *Morley v. Croxon*, 8 Ch. D. 156.

So, also, where there is a mere power to purchase land: *Att.-Gen. v. Goddard*, T. & R. 348.

Power.

Similarly, a bequest is not void where trustees have an option to lay it out either in the purchase of land or upon Government or personal security: *Sorresby v. Hollins*, 9 Mod. 221; *Widmore v. Woodroffe*, 1 Bro. C. C. 13, n.; *Att.-Gen. v. Parsons*, 8 Ves. 186; *Curtis v. Hutton*, 14 Ves. 537.

Option to invest in real or other securities.

For the same reason, where a testator directed his trustees to invest his personal estate upon real securities, with full power "to change the securities or funds," and he bequeathed a part to a charity, it was held that the discretion as to the mode of investment rendered the charitable gift valid: *Graham v. Paternoster*, 31 Beav. 30; *Re Beaumont's Trusts*, 32 Beav. 191.

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Option as to
charities to be
benefited.

Where trustees had a discretion to divide a residuary estate among hospitals or other charitable institutions as they should think proper, it was held that they could exercise their discretion by giving impure personality to charities exempted from the Act and pure personality to charities not so exempted: *Lewis v. Allenby*, L. R. 10 Eq. 668.

The same principle was applied where the gift was directed to be applied for promoting the cause of education or founding scholarships at Cambridge: *Re Marmaduke Levitt*, 1 Times L. R. 578.

But this principle does not apply where no intention is disclosed that charitable institutions are among the objects intended to be benefited: *Re Clark, Husband v. Martin*, 54 L. J. Ch. 1080.

Thus, the Court refused to uphold a bequest of impure personality directed to be given to the poor upon the ground that the trustees might, without breach of trust, give it to institutions capable of taking it: *ibid*.

Improper
application
restrained.

When the trustees have an option to apply the fund legally or illegally, the Court will restrain an illegal application: *Carter v. Green*, 3 K. & J. 591.

Names of
charities pro-
posed to be
benefited
submitted to
judge.

In *Lewis v. Allenby*, *supra*, the trustees were directed to submit to the judge in Chambers the names of the charities proposed to be benefited. See, however, *University of London v. Yarrow*, 24 Beav. 472, where no such direction was given.

Bequest to
society bound
to purchase
land.

A bequest to a charitable society bound by its rules to invest its funds in the purchase of land is void: *Widmore v. Woodroffe*, Amb. 636; *Middleton v. Clitherow*, 3 Ves. 734; *Incorporated Church Building Society v. Coles*, 5 De G. M. & G. 324.

Instrument
of foundation
read into will.

In these cases the will is construed as though the instruments constituting the society were incorporated in it: *Carter v. Green*, 3 K. & J. 591.

Funds of
society not
necessarily
applied in
purchasing
land.

Consequently, where the funds of the society are not necessarily to be applied in purchasing land, as where they may also be expended in a manner not obnoxious to the Statute, the gift is good.

Thus, in *Church Building Society v. Barlow*, 3 De G. M. & G. 120, where it was held that a bequest to the Church Building Society was good, Turner, L. J., said (at p. 124), "The case has been argued for the most part as if there had been a direct bequest for the purpose of building churches and chapels. There is, however, no direct bequest for any such purpose, but merely a bequest to a society incorporated for promoting the enlargement, building, and repairing of churches and chapels. . . . These objects may be promoted not only by the purchase of land, but by subscribing to build upon land which has already been devoted to that purpose, and is already in mortmain. There are, therefore, two modes in which the society might accomplish its objects, the one legal and the other which would involve illegal results. . . . I think that the incorporation must be referred to the legal purpose." It was, moreover, held that the society had not, under the Act by which it was incorporated, power to purchase land.

In *Carter v. Green*, 3 K. & J. 591, there was a bequest of residue to the treasurers of a charitable society. The object of the society, as declared by the deed under which it was constituted, was to promulgate the Gospel by, *inter alia*, "opening and supporting Sunday schools, by the erection or providing of places for religious worship, and by such other means as to the

society should seem meet." It was held by Wood, V.-C., that the bequest was good, inasmuch as the deed recited that lands had been already purchased with the money of the society, and notwithstanding that the deed contained a further recital, that other lands might be thereafter conveyed for the purposes of the society; for the erections might be on the lands then already held in mortmain.

So, also, in *Wilkinson v. Barber*, L. R. 14 Eq. 96, where the charity had a number of different objects.

If, however, the testator directs a gift to a society to be applied in a manner repugnant to the section, the fact that the society has objects to which the bequest might properly be applied does not render it valid.

Thus, in *Denton v. Lord John Manners*, 2 De G. & J. 675, a testator gave his residuary personal estate to Lord John Manners, or the secretary for the time being of "The association for buying inappropriate tithes and re-vesting them in the Church of England," and directed that his pure personal estate should be primarily applied to the above-mentioned charitable purpose. No society of such name existed, but Lord John Manners was secretary of an association called "The Tithe Redemption Trust," established for the purpose of promoting the restoration of inappropriate tithes to the Church. It was alleged that several of the modes in which this association employed its funds were such that a bequest might be legally made to it. It was held by the Court of Appeal that, assuming the association to have objects not interfered with by 9 Geo. II. c. 36, and assuming a bequest to it generally to be valid, the testator had in the present case himself pointed out the application of his money to a particular object, and that, this object being one for which a gift by will could not be made, the bequest was void.

A bequest out of real estate for an object not charitable is, of course, not avoided by the section.

Thus, such a bequest for the erection of a monument, not being part of the fabric of the church, is good: *Mellick v. President, &c. of the Asylum*, Jac. 180; *Doe v. Pitcher*, 3 M. & S. 407; *Trimmer v. Danby*, 2 Jur. N. S. 367. And see *Mitford v. Reynolds*, 1 Ph. 185. So, the bequest of an annual sum for the repair of such a monument is good (*Willis v. Brown*, 2 Jur. 987), provided it does not infringe the rule against perpetuities. See *ante*, p. 7.

But a bequest of chattels real to build an organ gallery, being a charitable bequest, is void: *Adnam v. Cole*, 6 Beav. 353.

The hiring of a house or rooms does not come within the section: *Re Robson, Emley v. Davidson*, 19 Ch. D. 156; *Re Holburne, Coates v. Mackillop*, 53 L. T. N. S. 212. See also *Davenport v. Mortimer*, 3 Jur. 287; *Re Hedgman, Morley v. Croxon*, 8 Ch. D. 156.

A bequest for paying off an incumbrance on real estate belonging to a charity, as, for instance, on a meeting-house, is invalid (*Corbyn v. French*, 4 Ves. 418; *Re Lynall's Trusts*, 12 Ch. D. 211), even though the incumbrance be merely equitable: *Waterhouse v. Holmes*, 2 Sim. 162.

But a bequest for paying off debts contracted in respect of a meeting-house, but which do not constitute a charge upon it, is valid: *Bunting v. Marriott*, 19 Beav. 163; *Re Jones, Jones v. Williams*, 2 Times L. R. 544. See, however, *Davies v. Hopkins*, 2 Beav. 276.

In *Aston v. Wood*, 22 W. R. 894, a gift of money, to be invested on real securities and the income paid to a charity, was held void. It must be

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Direction that bequest to charitable society shall be laid out in improper manner.

Purpose not charitable.

Erection or repair of monument.

Organ gallery.

Hiring house or rooms.

Paying off incumbrance.

Debt not charged on land.

Money to be invested on real security.

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- Or on mortgage simply. remembered that charitable trustees are now authorised to invest on real security. See *ante*, p. 277.
- Bequest depending on illegal devise. The same is the case with a direction to invest "on mortgage security;" for the Court will not presume that the mortgage of a personal chattel, as a ship, or of real estate in Ireland, Scotland, or in any foreign country, was intended: *Baker v. Sutton*, 1 Keen, 224, 233, 234.
- Where houses were devised for the benefit of the poor of a parish, and a sum given for the endowment of them, it was held that, the gift of the houses being void, the money bequest failed also: *Att.-Gen. v. Goulding*, 2 Bro. C. C. 428; *Att.-Gen. v. Whitchurch*, 3 Ves. 141; *Price v. Hathaway*, 6 Madd. 304. And see further, *ante*, pp. 45, 46, and cases there cited.
- So, also, where there was a legacy to build almshouses and purchase ground, which failed, a residuary bequest to a charitable society provided they would furnish a piece of ground to build the houses, and would take the management, was held to fail with the principal gift: *Att.-Gen. v. Davies*, 9 Ves. 535. See also *Att.-Gen. v. Hodgson*, 15 Sim. 146. This case, however, more properly belongs to another class of decisions, and, if so, was wrongly decided. See *post*, p. 418.
- Investment in purchase of land. The Court, as we have seen, is unwilling to permit charity funds to be invested in the purchase of land, on the ground that it is contrary to the policy of the Mortmain Acts: *Att.-Gen. v. Wilson*, 2 Keen, 680; *Mather v. Scott*, *ibid.* 172.
- Such purchases are, nevertheless, allowed where they are plainly beneficial to the charity. See *ante*, p. 278, and cases there cited.

Precatory or Secret Trusts.

- Precatory trust. An illegal bequest in favour of a charity cannot be carried out by means of a precatory trust or a recommendation to trustees. In such a case the gift is as void as if an express trust had been declared in favour of charity: *Att.-Gen. v. Davies*, 9 Ves. at p. 546; *Kirkbank v. Hudson*, 7 Price, 212; *Pilkington v. Boughey*, 12 Sim. 114. See, however, *Baldwin v. Baldwin* (No. 1), 22 Beav. 413.
- Secret trust. Nor can the statute be evaded by trusts of a secret or honorary character.
- If there is a devise to persons and their heirs of property coming within this section, and a secret understanding between the devisees and the testator that they will hold it upon trust for a charity, the gift is void, and the devisees cannot take beneficially: *Boson v. Statham*, 1 Eden, 508; *Edwards v. Pike*, *ibid.* 267; *Muckleston v. Brown*, 6 Ves. 52; *Boyle v. Edwards*, cited *ibid.* at p. 61; *Stickland v. Aldridge*, 9 Ves. 516; *Pilkington v. Boughey*, 12 Sim. 114; *Johnstone v. Hamilton*, 5 Giff. 30; *Moss v. Cooper*, 1 J. & H. 352; *Sweeting v. Sweeting*, 12 W. R. 239; *Springett v. Jennings*, L. R. 6 Ch. 333. And see *Burr v. Miller*, W. N. 1872, 63; *O'Brien v. Tyssen*, 28 Ch. D. 372, where the secret trust was upheld on the ground that it was taken out of the operation of 9 Geo. II. c. 36, by the Church Building Act, 43 Geo. III. c. 108. See also *ante*, pp. 54 *et seq.*
- Devisees compelled to disclose trust. And the heir may compel the devisees to disclose the secret understanding: *Boson v. Statham*, *supra*; *Muckleston v. Brown*, *supra*; *Martin v. Hutton*,

cited 6 Ves. at p. 61; *Stickland v. Aldridge*, *supra*. And if it is denied by the devisee it may be proved *aliunde*: *Edwards v. Pike*, 1 Eden, 267.

But the burden of proof is on those who allege the existence of the trust: *Paine v. Hall*, 18 Ves. 475; *Jones v. Badley*, L. R. 3 Ch. at p. 364.

If the trust is established, but it is uncertain to how much of the property the testator intended it to extend, it rests with the trustee to show to what part of the property the trust does not extend: *Russell v. Jackson*, 10 Hare, 204.

If, however, there is no secret trust established the donees take the gift beneficially: *Addington v. Cann*, 3 Atk. 141; *Paine v. Hall*, 18 Ves. 475; *Wallgrave v. Tebbs*, 2 K. & J. 313; *Lomax v. Ripley*, 3 Sm. & Giff. 48. See also *Wheeler v. Smith*, 1 Giff. 300; *Longstaff v. Rennison*, 1 Dr. 28; *Littledale v. Bickersteth*, 24 W. R. 507; *Brook v. Badley*, L. R. 3 Ch. 362.

Where real estate is devised subject to a condition to transfer part to a charity, the devisee is absolutely entitled discharged from the condition: *Poor v. Mial*, 6 Madd. 32; and see *Henchman v. Att.-Gen.*, 3 My. & K. 485.

The present section cannot be evaded by a voluntary covenant that the executors shall pay a sum of money after the covenantor's death, which will have to be raised out of his real estate or impure personalty.

In *Jeffries v. Alexander*, 8 H. L. C. 594, Brame, five years before his death, executed a deed of covenant with Alexander, that he would in his lifetime, or that his executors would within twelve months after his decease (but subject and without prejudice to the payment and discharge out of his assets of all his debts, funeral and testamentary expenses, and of any bequest he might make by his will or any codicil thereto), invest 60,000*l.* in consols, in the names of trustees, to be held by them upon certain charitable trusts. The deed was not enrolled. The property left by the covenantor at his death consisted almost entirely of mortgages for terms of years. The judges who attended to assist the House of Lords were equally divided in their opinion upon the question submitted to them by the House, viz., assuming the validity of the deed of covenant, whether the sum of 60,000*l.* was payable from the proceeds of the chattels real of the covenantor, there being no other assets from which the payment could be made. The majority, however, of the House of Lords determined the question in the negative, reversing the decision of the Lords Justices (*nom. Alexander v. Brame*, 7 De G. M. & G. 525).

A voluntary covenant to secure by will the payment of a sum of money for charitable purposes stands upon the same footing: *Fox v. Lownds*, L. R. 19 Eq. 453.

In such a case, the covenant can only be satisfied out of pure personalty, and, like a legacy, must abate in the proportion of the impure to the pure personalty: *ibid.*, and see *ante*, pp. 60 *et seq.*

The case is, however, different where the covenant constitutes a mere debt, and there has been no evasion of the statute: *Re Robson, Emley v. Davidson*, 19 Ch. D. 156, *ante*, p. 401.

Where real estate is devised in trust for a charity, not only is the trust made void by the Act, but the devise of the legal estate also, which, in the event of there being no residuary devise in which it is comprised, or no valid gift over, descends to the heir-at-law: *Addington v. Cann*, 3 Atk. at p. 155; *Doe v. Wrighte*, 2 B. & Al. 710; *Pilkington v. Boughey*, 12 Sim. 114; *Cramp v. Playfoot*, 4 K. & J. 479; *Churcher v. Martin*, W. N. 1889, 116, a case of an unenrolled conveyance.

But this is not the case where, in addition to the charitable trusts, there

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Burden of proof.

Where no secret trust devisees take beneficially.

Devise on condition to transfer to charity.
Covenant in favour of charity to be enforced against realty.

Jeffries v. Alexander.

Fox v. Lownds.

Covenant only satisfied out of pure personalty.
Covenant being mere debt.

Devise of legal estate made void by charitable trust.

Not where

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there are valid trusts.

Nor where there is secret trust.

Gift over on failure of gift to charity.

are other trusts not liable to objection, for here the devise of the legal estate is supported by the valid trust: *Willet v. Sandford*, 1 Ves. Sen. 186; *Arnold v. Chapman*, *ibid.* 108; *Doe v. Pitcher*, 6 Taunt. 359; *Doe v. Harris*, 16 M. & W. 517; *Young v. Grove*, 4 C. B. 668; *Wright v. Wilkin*, 7 Jur. N. S. 441.

Nor is it the case where the devise is made subject to a secret charitable trust, which is void. Here the legal estate passes to the devisee, but is held by him in trust for the heir-at-law or other person entitled in default of the charity: *Sweeting v. Sweeting*, 12 W. R. 239.

A gift over to individuals or to charitable uses not void under this section, in the event of the previous gift being void, is valid, and will not, as Lord Northington considered (*Att.-Gen. v. Tyndall*, 2 Eden, 207, 214), be taken to have been inserted for the purpose of intimidating the heir and next of kin, and preventing them from opposing the charity, or be held a fraud upon the section: *De Themmines v. De Bonneval*, 5 Russ. 288; *Robinson v. Robinson*, 19 Beav. 494; *Carter v. Green*, 3 K. & J. 591; *Warren v. Rudall*, 4 K. & J. at p. 618.

A limitation over after a devise to charity, which is only expressed to take effect in the event of the devise failing for some specified reason (other than illegality), will nevertheless take effect upon failure of the devise under the provisions of this section.

Thus, where a testator devised a house to the inhabitants of a certain place for an asylum, and directed the executors to call a meeting of the inhabitants and appoint a committee, and in the event of the inhabitants not appointing a committee devised the house over, it was held that the limitation over took effect, although the prior gift failed, not for the reasons specified in the will, but because it was void under 9 Geo. II. c. 36: *Hall v. Warren*, 9 H. L. C. 420; *S. C. nom. Warren v. Rudall*, 4 K. & J. 603.

Wood, V.-C., in giving judgment in the Court below, said (4 K. & J. at p. 614): "I cannot see any substantial distinction between the cases to which I have referred, of a devise over after a devise to a nonentity, if the nonentity should die under age, or again, of a devise over after a devise to a deceased person, if the deceased person should fail to do a certain act, and the case before me of a devise to a charity, which cannot take, followed by a devise over in the event of that charity, which cannot take, omitting to perform a certain act. The cases seem to me identical in principle. The reason applicable to the one must apply to the other, and must lead to the conclusion that this is not to be read as a strict condition, but as a conditional limitation; and, as Lord Hardwicke says, the prior limitation being out of the case, the subsequent limitation is to take effect."

The earlier cases of *Att.-Gen. v. Hodgson*, 15 Sim. 146; and *Philpott v. Governors of St. George's Hospital*, 21 Beav. 134, so far as they are inconsistent with the rule above laid down, are overruled by *Hall v. Warren*, *supra*.

Who entitled on failure of charitable gift.

As a general rule a void gift, whether of realty or personality, falls into residue: *Wills Act* (7 Will. IV. & 1 Vict. c. 26), s. 25; *Re Brown*, 1 K. & J. 522; *Champney v. Davy*, 11 Ch. D. 949. But if there is no residuary gift, or if the gift which fails is itself residuary, there is a resulting trust to the heir-at-law, or the next of kin, as to the whole of the gift, or so much of it as fails: *Gibbs v. Rumsey*, 2 V. & B. 294; *Gravenor v. Hallum*, Amb. 643; *Middleton v. Cater*, 4 Bro. C. C. 409; *Chapman v. Brown*, 6 Ves. 404; *Tee v. Ferris*, 2 K. & J. 357; *Taylor v. Bland*, W. N. 1880, 155; and see *Duncan v. Lawson*, 5 Times L. R. 402, as to the will of a domiciled Scotchman having leasehold estates in England.

Where land is directed to be sold and the proceeds are given to charity, the resulting trust is to the heir-at-law: *Att.-Gen. v. Lord Weymouth*, Amb. 20; *Hopkinson v. Ellis*, 10 Beav. 169. If, on the other hand, money is directed to be laid out in land for the benefit of a charity, the resulting trust is to the next of kin: *Cogan v. Stephens*, 1 Beav. 482, n.

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If lands are devised, subject to a charge in favour of charity, which fails under the section, the rule is, that the sum charged sinks for the benefit of the devisee: *Wright v. Row*, 1 Bro. C. C. 61; *Jackson v. Hurlock*, 2 Eden, 263; *Baker v. Hall*, 12 Ves. 497; and see the remarks of Lord Brougham in *Henchman v. Att.-Gen.*, 3 My. & K. at p. 493. On the other hand, if the sum given to charity is excepted out of the devise, it falls into residue, or results for the benefit of the heir: *Wright v. Row*, *supra*; *Arnold v. Chapman*, 1 Ves. Sen. 108; *Gravenor v. Hallum*, Amb. 643.

Devise subject to charge and exception out of devise.

In the case of a void secret trust, it is the equitable estate which results, the legal estate remaining in the devisee: *Sweeting v. Sweeting*, 12 W. R. 239.

Void secret trust.

If there are no next of kin to take the benefit of the resulting trust, and no intention is shown that the executors shall take beneficially, the property passes to the Crown as *bona vacantia*: *Middleton v. Spicer*, 1 Bro. C. C. 201; *Johnstone v. Hamilton*, 5 Giff. 30.

When Crown entitled to personal estate.

The case was formerly different with regard to real estate. But under the *Intestates Estates Act*, 1884 (47 & 48 Vict. c. 71), s. 4, in case of there being no heir-at-law to take under the resulting trust the property escheats.

Real estate.

In *Henchman v. Att.-Gen.*, 3 My. & K. 485, there was a devise of copyholds upon condition that the devisee, within one month, should pay 2,000*l.* to the testator's executor, to be applied, after payment of debts and legacies, to charitable purposes. The testator died without leaving any customary heir or next of kin. It was held by Lord Brougham, C., that the proportion of the 2,000*l.*, which was void under 9 Geo. II. c. 36, was to be considered as real estate undisposed of, and that the devisee and not the Crown was entitled to it.

Henchman v. Att.-Gen.

5.—(1.) (b) Where an instrument, the enrolment whereof is required under this Part of this Act for the validation of an assurance (c), is not duly enrolled within the requisite time (d), her Majesty's High Court of Justice, or the officer having control over the enrolment of deeds in the Central Office (e), may, on application in such manner and on payment of such fee as may be prescribed by rules of the Supreme Court (f), and on being satisfied that the omission to enrol the instrument in proper time has arisen from ignorance or inadvertence, or through the destruction or loss of the instrument by time or accident, and that the assurance was of a nature to be validated under this section, order or cause the instrument to be enrolled.

Power to remedy omission to enrol within requisite time (a).

(2.) (g) Thereupon, if the assurance (c) to be validated

Sect. 5. was made in good faith and for full and valuable consideration (*h*), and was made to take effect in possession immediately from the making thereof without any power of revocation, reservation, condition, or provision, except such as is authorized by this Act (*i*), and if at the time of the application possession or enjoyment was held under the assurance, then enrolment in pursuance of this section shall have the same effect as if it had been made within the requisite time (*d*):

(3.) (*j*) Provided that if at the time of the application any proceeding for setting aside the assurance (*c*), or for asserting any right founded on the invalidity of the assurance, is pending, or any decree or judgment founded on such invalidity has been then obtained, the enrolment under this section shall not give any validity to the assurance.

(4.) (*k*) Where the instrument omitted to be enrolled in proper time (*d*) has been destroyed or lost by time or accident and the trusts thereof sufficiently appear by a copy or abstract thereof or some subsequent instrument, such copy, abstract, or subsequent instrument may be enrolled under this section in like manner and with the like effect as if it were the instrument so destroyed or lost.

(5.) (*l*) An application under this section may be made by any trustee, governor, director, or manager of, or other person entitled to act in the management of or otherwise interested in, any charity or charitable trust intended to be benefited by the uses declared by the instrument to be enrolled.

Former enactments.

(a) This section consolidates and re-enacts the provisions of 24 & 25 Vict. c. 9, s. 5; 27 & 28 Vict. c. 13, s. 3; 29 & 30 Vict. c. 57, ss. 1, 2, 3 and 4; and 35 & 36 Vict. c. 24, s. 13, all of which are repealed by sect. 13 of the present Act.

Effect of sect. 2 of 9 Geo. II. c. 36.

It has been stated (*ante*, p. 394) that sect. 2 of 9 Geo. II. c. 36 relieved assurances for full and valuable consideration from the risk of being rendered invalid by the death of the assurator within the prescribed period after the date of the assurance.

Early misapprehensions

The meaning of that section was the subject of considerable misapprehension, it being commonly supposed that it was intended to exempt assurances of the

kind therein mentioned from the operation of the Act altogether, so as to render it unnecessary for them to comply with the requirements of sect. 1. The consequence was that many assurances to charitable uses for full and valuable consideration were executed without the formalities required by sect. 1, with the result that they were rendered void by sect. 3.

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(*n*)

as to its
operation.

To obviate this result, so far as non-enrolment was concerned, a series of Acts was passed by which the time within which assurances for valuable consideration might be enrolled was from time to time extended.

Acts enlarg-
ing time for
enrolment.

The first of these Acts was 9 Geo. IV. c. 85. That Act provided that where lands or any estate or interest therein had been purchased for any charitable uses for full and valuable consideration actually paid, every assurance of such lands (if made to take effect in possession for the charitable use intended immediately from the making thereof, and without any power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the grantor or any person or persons claiming under him) should be as valid as if the formalities of sect. 1 of 9 Geo. II. c. 36 had been duly observed. But the Act was not to extend to validate assurances made after its passing. The effect of this Act was considered in *Doe v. Hawkins*, 1 G. & D. 551.

9 Geo. IV.
c. 85.

The next Act was 24 & 25 Vict. c. 9, which by sect. 3 provided that no assurance for charitable uses of any hereditaments for full and valuable consideration actually paid should be avoided by 9 Geo. II. c. 36, if such assurance was made to take effect in possession for the charitable use intended immediately from the making thereof, and was without any power of revocation, and had been enrolled at any time before the passing of that Act or within twelve months afterwards.

24 & 25 Vict.
c. 9.

By 25 & 26 Vict. c. 17, s. 1, and 27 & 28 Vict. c. 13, s. 1, the time within which the enrolment might be made was further extended by the last Act to the 17th of May, 1866. And sect. 4 of 24 & 25 Vict. c. 9, amended by sect. 4 of 25 & 26 Vict. c. 17, and sect. 2 of 27 & 28 Vict. c. 13, made similar provision for cases where the charitable uses were declared by a separate deed.

25 & 26 Vict.
c. 17.
27 & 28 Vict.
c. 13.

The next Act was 29 & 30 Vict. c. 57, which empowered the Court of Chancery, upon the application by summons of any trustee, governor, director, or manager of a charity, or any other person entitled to act in the management of, or otherwise interested in, a charitable trust (sect. 1), if satisfied that an assurance conveying or charging hereditaments for charitable uses was made *bonâ fide* for full and valuable consideration, and that at the time of application possession or enjoyment was held under such assurance, and that the omission to enrol had arisen from mere ignorance or inadvertence, or the destruction of the deed by time or accident, to make an order authorising the enrolment of the assurance, or (where it had been lost by time or accident, and the trusts thereof sufficiently appeared by some subsequent deed appointing new trustees or otherwise reciting the trusts created by the original assurance) such subsequent deed, within six months from the date of the order. And it was provided that no acknowledgment prior to enrolment should be necessary (sect. 2).

29 & 30 Vict.
c. 57.

Six years later, by sect. 13 of the Charitable Trustees Incorporation Act, 1872 (*post*, Part III. of this Book), a power to enrol assurances, co-extensive with that of authorizing enrolments conferred by the last-mentioned Act upon the Court of Chancery, was given to the Clerk of Enrolments in Chancery.

Charit.
Trustees
Incorporation
Act, 1872.

Sect. 5**(a)–(g)****Repeal.****Enlargement
of time for
enrolment in
special cases.**

All the above-mentioned Acts, 9 Geo. IV. c. 85, 24 & 25 Vict. c. 9, 25 & 26 Vict. c. 17, 27 & 28 Vict. c. 13, and 29 & 30 Vict. c. 57, are repealed by sect. 13 of the present Act, *post*. Sect. 13 of the Charitable Trustees Incorporation Act, 1872, is also repealed by the same section.

Besides the Acts above mentioned, various other Acts have from time to time been passed, by which in particular cases an enlarged time has been allowed for enrolling assurances to charitable uses. By 4 & 5 Vict. c. 38, s. 16 (repealed by the Stat. Law Rev. Act (No. 2), 1874), assurances for valuable consideration upon trust for the purposes of the education of the poor, and not enrolled, were rendered valid if enrolled within twelve months after the passing of the Act.

By the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 73, it is provided that where assurances, whether gratuitous or for valuable consideration, of lands, &c., have been made to or in trust for the churchwardens and overseers of the poor, or the overseers only, or the guardians of a parish, or otherwise for the benefit of a parish, or to or in trust for the guardians of a union for the purpose of providing a workhouse or asylum for the poor of the parish or union, such assurances are to be deemed valid, although not enrolled pursuant to 9 Geo. II. c. 36.

The last-mentioned section cures no defect except want of enrolment: *Webster v. Southey*, 36 Ch. D. 9.

In the case of Roman Catholic charities, it was enacted by the Roman Catholic Charities Act, 1860 (*post*, Part III. of this Book), that deeds relating to such charities should not be void if enrolled within twelve months after the passing of the Act.

(b) This sub-section is substituted for part of the provisions of sect. 2 of 29 & 30 Vict. c. 57, and sect. 13 of the Charitable Trustees Incorporation Act, 1872, the provisions of which are stated in n. (a), *supra*. The remainder of such provisions, and of sect. 3 of 29 & 30 Vict. c. 57, are reproduced with slight variations by sub-sect. 2 of the present section.

(c) Defined by sect. 10, *post*, p. 439.

(d) See sub-sect. (9) of sect. 4 of the present Act, *ante*, p. 387.

**Enrolment,
how effected.**

(e) The officer having control over the enrolment of deeds is now the Clerk of Enrolments.

Enrolment formerly took place in Chancery. By the Jud. (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 5, the Enrolment Office was amalgamated with the Central Office of the Supreme Court of Judicature, and the office of Clerk of Enrolments is one of the offices which, under sect. 14 of the same Act, will be abolished on the next vacancy. In the meanwhile, under sect. 7, the existing Clerk of Enrolments retains his control and superintendence over the business hitherto performed in his office. Upon a vacancy arising the office will, under sect. 27 of the last-mentioned Act, be filled up by such officer as may be substituted by rules of Court.

It is provided by R. S. C. 1883, Ord. LXI. r. 9, that deeds which by any statute or statutory rule are directed or permitted to be enrolled in any of the Courts whose jurisdiction has been transferred to the High Court of Justice, may be enrolled in the Enrolment Department of the Central Office.

(f) Under 29 & 30 Vict. c. 57, s. 1 (see *ante*, p. 421), the application to the Court for enrolment was by summons without service upon any person.

(g) See n. (b), *supra*.

(h) As to what is full and valuable consideration, see *ante*, pp. 394, 395, and sect. 13, *post*.

(i) See sub-sects. (2), (3), and (4) of sect. 4 of the present Act, *ante*, p. 386, and notes thereto.

(j) This sub-section re-enacts, without substantial variation, sect. 4 of 29 & 30 Vict. c. 57, and it also takes the place of the earlier enactment to the similar effect in 24 & 25 Vict. c. 9, s. 5.

(k) This sub-section is taken from sect. 3 of 27 & 28 Vict. c. 13. Under the old provision the subsequent deed enrolled must have been "some subsequent deed appointing new trustees, or otherwise reciting the trusts created by the original deed." The provision that a copy or abstract of the original deed may be enrolled is new, and was not in the bill when first introduced.

(l) This sub-section reproduces sect. 3 of 27 & 28 Vict. c. 13, and sect. 1 of 29 & 30 Vict. c. 57.

Sect. 5
(h)—(l)

PART III.—EXEMPTIONS.

6.—(1.) Parts One and Two of this Act shall not apply to an assurance (b) by deed of land (b) of any quantity or to an assurance by will of land of the quantity hereinafter mentioned for the purposes only of a public park, a schoolhouse for an elementary school (c), a public museum, or an assurance by will of personal estate to be applied in or towards the purchase of land for all or any of the same purposes only :

Assurances
for a public
park, ele-
mentary
school, or
public
museum (a).

(2.) Provided that a will containing such an assurance, and a deed containing such an assurance and made otherwise than in good faith for full and valuable consideration (d), must be executed not less than twelve months before the death of the assurator, or be a reproduction in substance of a devise made in a previous will in force at the time of such reproduction, and which was executed not less than twelve months before the death of the assurator, and must be enrolled in the books of the Charity Commissioners within six months after the death of the testator, or in case of a deed the execution of the deed.

(3.) The quantity of land which may be assured by will under this section shall be any quantity not exceeding twenty acres for any one public park, and not exceeding

Sect. 6. two acres for any one public museum, and not exceeding one acre for any one schoolhouse.

(4.) In this section :—

- (i.) “public park” includes any park, garden, or other land dedicated or to be dedicated to the recreation of the public ;
- (ii.) “elementary school” means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction from each scholar exceed ninepence a week ;
- (iii.) “school house” includes the teacher’s dwelling-house, the playground (if any), and the offices and premises belonging to or required for a school ;
- (iv.) “public museum” includes buildings used or to be used for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical or philosophical inventions, instruments, models or designs, and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories, and other offices and premises used or to be used in connexion therewith.

Former enactments.

(a) This section re-enacts 34 & 35 Vict. c. 13, which is repealed by sect. 13 of the present Act, *post*.

Sub-sects. 1 and 2 of the present section take the place of sects. 4 and 5 of 34 & 35 Vict. c. 13; sub-sect. 3 reproduces sect. 6; and sub-sect. 4 re-enacts sect. 3 of that Act.

The only material alteration introduced by the present enactment is in sub-sect. 2. The words in that sub-section “or be a reproduction in substance of a devise made in a previous will in force at the time of such reproduction, and which was executed not less than twelve months before the death of the assursor,” are new. The sub-section also clears up a little difficulty which had been felt under sect. 5 of the old Act as to the time for enrolment.

Construction of Act.

Provisions like that contained in the present section are construed widely : *Harrison v. Corporation of Southampton*, 2 Sm. & Giff. 387, decided on 8 & 9

Vict. c. 43, repealed by 13 & 14 Vict. c. 65, itself repealed by the Public Libraries Act, 1855 (18 & 19 Vict. c. 70). In that case Stuart, V.-C., said, at p. 391, "It would seem to be the duty of the Court, where it finds that the legislature intended to legalise the dedication of property to laudable public purposes, to construe the Act rather as enlarging than limiting the provisions of the statute enacted for that purpose."

Sect. 8
(a)—(d)

By the Recreation Grounds Act, 1859 (22 Vict. c. 27), s. 1, it is provided that lands may be lawfully conveyed to trustees to be held as open public grounds and play-grounds; and by sect. 2, the grant or conveyance of such lands is not to require enrolment, or to be by indenture, and is valid although the donor or grantor die within twelve months after the making of the grant.

Recreation
grounds.
22 Vict. c. 27.

The management and direction of such grounds remain in the persons named in the conveyance, but if no persons are so named, or there is a failure of such managers and directors, the Charity Commissioners have power to settle a scheme for the appointment of the managers and directors: sect. 5.

Finally, by sect. 7, any person may bequeath personal property up to 1,000*l.* to defray the expenses of purchasing, preparing, maintaining, and preserving such grounds for the purposes aforesaid.

By the Open Spaces Act, 1887 (50 & 51 Vict. c. 32), s. 7, any corporation, other than a municipal corporation, having power to sell land, may convey for value, or by way of gift, to any urban or rural authority, such land for the purpose of its being preserved as an open space for the enjoyment of the public, and the urban or rural authority may accept the same; or where the corporation is the local authority, they may appropriate the land for an open space.

Open spaces.
50 & 51 Vict.
c. 32.

(b) Defined by sect. 10 of this Act, *post*.

(c) See also the Schools Sites Acts, *post*, pp. 438, 439.

(d) See *ante*, pp. 394, 395.

7. Part Two of this Act shall not apply to the following assurances:—

Assurances
for certain
universities,
colleges, and
societies.

- (i.) (a) An assurance (b) of land (b), or personal estate to be laid out in the purchase of land, to or in trust for any of the Universities of Oxford, Cambridge, London, Durham, and the Victoria University, or any of the colleges or houses of learning within any of those universities, or to or in trust for any of the colleges of Eton, Winchester, and Westminster, for the better support and maintenance of the scholars only upon the foundations of those last-mentioned colleges, or to or in trust for the warden, council, and scholars of Keble College:

- (ii.) (c) An assurance (b), otherwise than by will, to

Sect. 7.

trustees on behalf of any society or body of persons associated together for religious purposes, or for the promotion of education, art, literature, science, or other like purposes of land not exceeding two acres for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected, so that the assurance be made in good faith for full and valuable consideration :

Provided that the trustees of the instrument containing any assurance to which this section applies or declaring the trusts thereof, may, if they think fit, at any time cause the instrument to be enrolled (*d*) in the Central Office of the Supreme Court of Judicature.

Former enactments.

(*a*) This sub-sect. is substituted for sect. 4 of 9 Geo. II. c. 36 and sect. 6 of 24 & 25 Vict. c. 9, both of which provisions are repealed by sect. 13 of the present Act, *post*.

9 Geo. II. c. 36, s. 4.

Sect. 4 of 9 Geo. II. c. 36, exempted from the operation of the Act dispositions of lands, tenements, or hereditaments, or personal estate to be laid out in the purchase thereof, "to or in trust for either of the two universities within that part of Great Britain called England, or any of the colleges or houses of learning within either of the said universities, or to or in trust for the colleges of Eton, Winchester, or Westminster, or any or either of them, for the better support and maintenance of the scholars only upon the foundations of the said colleges of Eton, Winchester, and Westminster."

Sect. 5.

And by sect. 5 it was enacted "that no such college or house of learning which doth or shall hold or enjoy so many advowsons of ecclesiastical benefices as are or shall be equal in number to one moiety of the fellows or persons usually styled or reputed as fellows, or where there are or shall be no fellows or persons usually styled or reputed as fellows to one moiety of the students upon the foundation whereof any such college or house of learning doth or may by the present constitution of such college or house of learning consist, shall from and after the 24th day of June, 1736, be capable of purchasing, acquiring, receiving, taking, holding, or enjoying any other advowsons of ecclesiastical benefices by any means whatsoever; the advowsons of such ecclesiastical benefices as are annexed to or given for the benefit or better support of the headships of any of the said colleges or houses of learning, not being computed in the number of advowsons hereby limited."

How far repealed.

Sect. 5 of 9 Geo. II. c. 36, was repealed as to colleges or houses of learning in either of the two above-mentioned universities by 45 Geo. III. c. 101, which was itself repealed by the Stat. Law Rev. Act, 1872 (35 & 36 Vict. c. 63).

By sect. 13, sub-s. (1) of the present Act, the whole of 9 Geo. II. c. 36, is repealed, except so much of sect. 5 as was previously unrepealed. Sect. 5 is left unaffected, as being outside the scope of the present Act.

Sect. 7
(a)

The Universities of Oxford and Cambridge, to the extent of land required for the extension of university and college buildings, are exempted from Part I. of this Act prohibiting the acquisition of land in mortmain. Oxford and Cambridge.

By 20 & 21 Vict. c. 25, s. 4, the University of Oxford is empowered to purchase land within a limited distance for the erection of any buildings, for the extension of the buildings of the university, or any college or hall therein, or for purposes of utility or recreation relating to the university or any college or hall therein. And by 19 & 20 Vict. c. 88, s. 51, a similar provision is enacted with regard to Cambridge.

Finally, by the Universities of Oxford and Cambridge Act, 1877 (40 & 41 Vict. c. 48), s. 60, it is enacted that a licence to aliene, or to take and hold in mortmain, shall be and be deemed to have been unnecessary in respect of a purchase made before or after the passing of the Act by the university or a college of land situate within a district or place described or named in and required for any purpose mentioned in the above sections.

The inclusion among the exemptions in this section of the Universities of London and Durham and the Victoria University and Keble College is new and was introduced into the Act during its passage through Parliament. London and Durham Universities, &c.

By 4 & 5 Vict. c. 39, s. 13, the University of Durham was empowered to purchase and hold lands, tenements, tithes, and other hereditaments, the Statutes of Mortmain or any other Act or Acts to the contrary notwithstanding.

By the Public Schools Act, 1868 (31 & 32 Vict. c. 118), s. 5, the governing body of Westminster School is incorporated, with power to hold lands for the purposes of the school without licence in mortmain. And by the Public Schools Act, 1869 (32 & 33 Vict. c. 58), s. 2, the provision is extended to the governing body of every school to which the Public Schools Act, 1868, applies, viz., Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby, and Shrewsbury. Public schools.

The exception in this sub-section applies only to devises which are really for the benefit of the universities or colleges; it does not apply to cases where the legal estate only passes in trust for other charitable uses: per Lord Northington in *Att.-Gen. v. Tancred*, 1 Eden at p. 15; *S.C. Amb.* 351; and see *Att.-Gen. v. Munby*, 1 Mer. 327; *Att.-Gen. v. Whorwood*, 1 Ves. Sen. 534. Devise must be for benefit of university or college.

Moreover, the devise must be for an academical or collegiate purpose. Where there was a devise to a college in order that the senior fellow might live in the testator's house, entertain the poor, distribute drugs, books, and so forth, and give an annual entertainment to the fellows, it was held not to come within the exception to 9 Geo. II. c. 36: *Att.-Gen. v. Whorwood*, 1 Ves. Sen. 534. And for academical or collegiate purposes.

But where the gift is for a collegiate purpose, it is immaterial that only one or two members of the college will, in fact, enjoy the benefit of it. Thus a devise to the master and fellows of Christ's, in trust that they and their successors would apply the yearly rents for some undergraduate student, was held valid: *Att.-Gen. v. Tancred*, 1 Eden, 10, 11, 15. So, also, a gift of

Sect. 7

(a)—(d)

Exception of
corporations
under old
Statute of
Wills.

impure personalty for founding a scholarship at a university: *Re Marmaduke Levitt*, 1 Times L. R. 578.

Under the Statute of Wills, 34 & 35 Hen. VIII. c. 5, s. 4, there was power to devise to any person or persons except corporations. Notwithstanding this exception, it was held in *Bennet College, Cambridge v. Bishop of London* (2 Wm. Bl. 1182), that a devise to a college was good, not merely in equity by way of appointment to uses, but also at law, and would convey the legal estate, on the ground that 43 Eliz. c. 4, was *pro tanto* a repeal of the exception in 34 & 35 Hen. VIII. c. 5. This decision, if correct, was not affected by 9 Geo. II. c. 36, because colleges of the universities were excepted from that Act. Lord St. Leonards, however, doubted the accuracy of the decision: *Incorporated Society v. Richards*, 1 Dr. & W. at p. 305. The present Statute of Wills, 7 Will. IV. & 1 Vict. c. 26, contains no such exception in the case of corporations.

Colleges
established
after date of
Act.

Lord Northington was of opinion that the exception in sect. 5 of 9 Geo. II. c. 36, extended only to colleges established in the universities at the time of the statute; but Lord Loughborough expressed his doubts as to that distinction: see *Att.-Gen. v. Bowyer*, 3 Ves. Jun. at p. 728, n. (6).

The present section seems to extend, at all events, to all colleges existing at the date of the Act. It will be noted, however, that it was deemed necessary expressly to include Keble College.

(b) Defined by sect. 10 of this Act, *post*.

Former
enactments.

(c) Sub-s. (ii) of sect. 7, taken in connection with the definition of valuable consideration contained in sect. 10 of this Act, re-enacts without material modification sects. 1 and 2 of 31 & 32 Vict. c. 44, which are repealed by sect. 13 of the present Act, *post*.

Science,
literature,
and fine arts.
17 & 18 Vict.
c. 112.

By sects. 1 and 33 of 17 & 18 Vict. c. 112, land not exceeding one acre may be conveyed by way of gift, sale, or exchange for an institution for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms, public museums, galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs, (except the Royal Institution and the London Institution for the Advancement of Literature and Diffusion of Useful Knowledge). And by sect. 6, any corporation, ecclesiastical or lay, sole or aggregate, and any officers, justices of the peace, trustees or commissioners holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, may convey such land; and by sect. 7, a majority of such trustees may act. By sect 11, where the institution is not incorporated, the grant of land may be made to any corporation, sole or aggregate, or to several corporations sole, or any trustees, to be held for the purposes of the institution.

Any deed executed for the purposes of any institution to which the Act applies without valuable consideration continues valid, if otherwise lawful, although the donor or grantor dies within twelve months after the execution of the deed: sect. 14. See also 15 & 16 Vict. c. 49, *post*, p. 439.

(d) See note (e) to sect. 5 of this Act, *ante*, p. 422.

Libraries,
museums, &c.
Public
Libraries
Acts.

Under the Public Libraries Acts (18 & 19 Vict. c. 70; 29 & 30 Vict. c. 114; 34 & 35 Vict. c. 71, and 40 & 41 Vict. c. 54), the council of any borough and the board of any district, and in the case of a parish "the Commissioners for Public Libraries and Museums," may, with the approval of the Treasury,

purchase or rent any lands or suitable buildings (18 & 19 Vict. c. 70, s. 18) for public libraries, public museums, schools for science, art galleries, and schools for art, or for any one or more of those objects (47 & 48 Vict. c. 37, s. 2).

Sect. 7
(d)

Lands or any interest therein may be granted or devised to or taken by the Department of Science and Art for the purposes of their charter, or for any educational or public purpose, and sold when such sale is consistent with the trusts on which they are held; but the consent of the Commissioners of the Treasury or any two of them must be obtained: 38 & 39 Vict. c. 68, s. 1.

Department
of Science
and Art.
38 & 39 Vict.
c. 68.

8. Where by any statute now in force any provision of the enactments hereby repealed is excluded either wholly or partially from application, or is applied with modification, in every such case the corresponding provision of this Act shall be excluded or applied in like extent and manner (a).

Substitution
of provisions
of Act for
corresponding
repealed en-
actments.

(a) A great number of statutes have from time to time been passed by which exemptions have, in particular cases, been created from the Mortmain Acts, or from 9 Geo. II. c. 36, or from both.

Statutory
exemptions
from Mort-
main Acts
and 9 Geo. II.
c. 36.

These exemptions will be considered under two heads. The first comprises exemptions from the Mortmain Acts, now Part I. of the present Act. The second comprises exemptions from 9 Geo. II. c. 36, now Part II. of the present Act. In the case of charitable corporations, cases falling under the second head are, of course, also cases of exemption from the Mortmain Acts.

In either of the above-mentioned cases the exemption may be either total or partial. The exemption from the Mortmain Acts may be up to a limited quantity of land. The exemption from 9 Geo. II. c. 36, may (as regards conveyances *inter vivos*) be from the liability to avoidance in case of the death of the grantor within twelve months, or it may be an exemption extending only to assurances by will.

May be total
or partial.

Exemptions from Part I. of the Act.

Where the statute merely creates an exemption from the Mortmain Acts, now Part I. of the present Act, the provisions of 9 Geo. II. c. 36, now Part II. of this Act, apply, and land cannot be acquired by devise, and can only be acquired *inter vivos* in accordance with the prescribed formalities.

Exemption
from Mort-
main Acts
(Part I. of
present Act).

A special Act, passed previously to 9 Geo. II. c. 36, cannot have been intended to create an exemption from its provisions. In such a case, therefore, the exemption can only be from Part I. of this Act.

Special Act
prior to
9 Geo. II.
c. 36.

This case arose in *Luckcraft v. Pridham*, 6 Ch. D. 205. There a corporation was empowered by a statute of Anne to, "without licence in mortmain, purchase, take, or receive any lands, tenements, or hereditaments of the gift, alienation, or devise of any person or persons whatsoever having a right, and not being otherwise disabled, to grant, alien, or devise the same, who are hereby, without further licence, enabled to give, transfer, grant, or devise any such lands or hereditaments unto or for the use or benefit of the

Luckcraft v.
Pridham.

Sect. 8
(a)

said corporation." And it was held that it was not exempted from the operation of 9 Geo. II. c. 36, and that a bequest to it of moneys to arise from the sale of land was void. Nor did it make any difference that in the Acts subsequent to 9 Geo. II. c. 36, there were contained clauses providing that the clauses and powers of the statute of Anne should continue in force as if they had been re-enacted. "Continuing the provisions," said Jessel, M. R., at p. 214, "did not alter their nature and effect. They meant just the same as they meant before; and even if they had been re-enacted in so many words, that could not have altered their effect, which was only to dispense with the necessity for a licence in mortmain." See also *Mogg v. Hodges*, 2 Ves. Sen. 52.

Queen Anne's Bounty. With respect to the statutes relating to Queen Anne's Bounty, see *post*, p. 434.

Hospitals. By 39 Eliz. c. 5, s. 1, power was given to any person seised of land in fee simple, at any time within twenty years from the date of the Act, by deed enrolled in Chancery, to erect, found, and establish hospitals, maisons de Dieu, abiding places, and houses of correction, such hospitals to be incorporated, and to have power to purchase and hold up to the yearly value of 200*l.*, notwithstanding the Statute of Mortmain. This Act was made perpetual by 21 Jac. I. c. 1.

A municipal corporation is a person within this provision: *Corporation of Newcastle v. Att.-Gen.*, 12 Cl. & F. 402.

Power to corporation to take and hold land. A power merely to purchase, take, hold, and enjoy land creates an exemption from Part I., but not from Part II., of this Act. In such a case, therefore, the land can only be acquired in accordance with the requirements of Part II.

Nethersole v. School for the Indigent Blind. In *Nethersole v. School for the Indigent Blind*, L. R. 11 Eq. 1, and *Chester v. Chester*, L. R. 12 Eq. 444, the Act which incorporated the charity provided that the corporation should be capable in law to have, hold, receive, enjoy, possess, and retain for the ends and purposes of the Act and in trust for the benefit of the institution all such sum and sums of money as had been paid, given, devised, or bequeathed, or should at any time or times thereafter be paid, given, devised, or bequeathed, by any charitable or well-disposed person or persons to and for the charitable purposes and ends in the Act mentioned, and might purchase, take, or receive, and thenceforth hold and enjoy any lands, tenements, or hereditaments, in the whole not exceeding two acres, for any estate or interest whatsoever for the purposes of the said charity, without incurring any of the penalties or forfeitures of the Statute of Mortmain. It was held in both cases that a bequest of money secured on mortgage to the corporation was void under 9 Geo. II. c. 36.

In *Nethersole v. School for the Indigent Blind*, *supra*, Romilly, M. R., said (at p. 3): "I have often had clauses such as these before me, and have quite made up my mind as to their meaning. I omit all consideration of the cases brought to my attention . . . in which charities are expressly empowered to take lands given to them by will. It is not my intention to decide anything as to these cases, which are not before me on this occasion. I intend merely to decide upon cases where there is a clause which enables a charity, by bequest and devise, to take and hold any sums of money for the purposes mentioned, and also enables them to hold land for the purposes of the charity. I am of opinion that such a clause does not enable any person to devise to the charity any interest in land." See also

Mogg v. Hodges, 2 Ves. Sen. 52, with reference to the Bath Hospital, and *Robinson v. Governors of London Hospital*, 10 Hare, at pp. 24, 25.

Sect. 8
(a)

Instances of this are the Foundling Hospital (13 Geo. II. c. 29), the Bank of England (8 & 9 Will. III. c. 20, s. 26), the Corporation of Bedford Level (15 Car. II. c. 17), the Royal Exchange Assurance and the London Assurance (6 Geo. I. c. 18; 8 Geo. I. c. 15, s. 25; 11 Geo. I. c. 30, s. 43).

Instances.

Under the Charitable Trusts Acts moneys arising from a sale, exchange, or partition of charity of land may be re-invested in land by an incorporated charity or charity trustees whether incorporated or not, and land so purchased or acquired by way of exchange or partition may be held without licence in mortmain: Charit. Trusts Amend. Act, 1855, s. 35, *post*.

Charitable
Trusts Acts.

And incorporated trustees of charities are enabled to purchase sites for the erection of a house or building, with or without garden, playground, or otherwise, and to hold such lands without licence in mortmain: Charit. Trusts Act, 1853, s. 27, and Charit. Trusts Amend. Act, 1855, s. 41, *post*.

Charity trustees incorporated under the Charitable Trustees Incorporation Act, 1872, *post*, are empowered (sect. 1) to acquire land notwithstanding the Statute of Mortmain; but the enactment does not affect the provisions of Part II. of this Act.

Charit.
Trustees
Incorporation
Act, 1872.

Under the Companies Act, 1862 (25 & 26 Vict. c. 89), s. 18, joint stock companies become, upon registration, corporate bodies "with power to hold lands." And sect. 21 provides, that "no company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, shall, without the sanction of the Board of Trade, hold more than two acres of land; but the Board of Trade may, by licence under the hand of one of their principal secretaries or assistant secretaries, empower any such company to hold lands in such quantity and subject to such conditions as they think fit." See also *ante*, p. 385.

Joint stock
companies.

Various incorporated public bodies are empowered, without licence in mortmain, to take, purchase, and hold lands for the purposes for which they are constituted. Such are the guardians of the poor (5 & 6 Will. IV. c. 69, s. 7), burial boards in the metropolis (15 & 16 Vict. c. 85, s. 24) and throughout England (16 & 17 Vict. c. 134, s. 7), metropolitan vestries and district boards and the Metropolitan Board of Works (Metrop. Loc. Man. Act, 1855, 18 & 19 Vict. c. 120, ss. 42 and 43), local boards in urban districts, and improvement commissioners, being an urban authority and not otherwise incorporated, and joint boards (Public Health Act, 1875, 38 & 39 Vict. c. 55, ss. 7 and 280), drainage boards (24 & 25 Vict. c. 133, s. 66), highway boards (25 & 26 Vict. c. 61, s. 9), school boards (Elem. Educ. Act, 1870, 33 & 34 Vict. c. 75, ss. 30, 37), county councils (Local Government Act, 1888, 51 & 52 Vict. c. 41, s. 79), the Prison Commissioners (40 & 41 Vict. c. 21, s. 6).

Public bodies.

Under the Poor Law Act (43 Eliz. c. 2), s. 4, parcels of waste may, with the consent of the lord of the manor, be enclosed for sites of cottages for the poor of the parish.

Enclosure of
waste for
cottages.

The council of a municipal corporation, not having power to purchase or acquire land, or hold land in mortmain, may, with the approval of the Treasury, purchase or acquire land in such manner and on such terms and conditions as the Treasury approve, and the same may be conveyed to and

Municipal
corporations.

Sect. 8 (a)	held by the corporation accordingly: Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 107.
Purchase of commons by urban sanitary authority.	By the Commons Act, 1876 (39 & 40 Vict. c. 56), s. 8, an urban sanitary authority is empowered to acquire by gift and hold, without licence in mortmain, on trust for the benefit of their town any suburban common in respect of which they would be entitled to receive notice of any application made to the Inclosure Commissioners in pursuance of the Act and any rights in such a common.
Church Building Acts, &c.	Many of the Acts relating to the augmentation of benefices, Church Building Acts, and other similar statutes, fall under this head; but inasmuch as they would be unintelligible unless arranged consecutively, they are for convenience inserted together <i>post</i> , pp. 435 <i>et seq.</i>
School Sites Acts.	The same is the case with the School Sites Acts: <i>post</i> , pp. 438, 439.
Redemption of land tax.	By 42 Geo. III. c. 116, s. 9, corporations are empowered to contract for the redemption of land tax. See <i>post</i> , p. 433.

Exemptions from Part II. of the Act.

Exclusion of 9 Geo. II. c. 36 (Part II. of present Act).	The next class of cases to be considered is those in which the special Act excludes, either wholly or partially, 9 Geo. II. c. 36 (Part II. of the present Act). This exclusion, of course, involves also, in the case of a corporation, the exclusion of the Mortmain Acts (Part I. of this Act).
Conveyance valid though grantor die within twelve months.	It is sometimes enacted that conveyances without valuable consideration for particular charitable purposes shall continue valid, if otherwise lawful, although the grantor die within twelve months from the execution of the conveyance. Instances of this are to be found in the School Sites Acts, 7 & 8 Vict. c. 37, s. 3, 12 & 13 Vict. c. 49, s. 4; in 17 & 18 Vict. c. 112, s. 14, as to institutions for science, literature, and the fine arts; in the Recreation Grounds Act, 1859, 22 Vict. c. 27, s. 2; and in the Places of Worship Sites Act, 1873, 36 & 37 Vict. c. 50, s. 4. See <i>ante</i> , p. 395.
Conveyance good without enrolment.	A conveyance of messuages or lands, whether gratuitous or for value, to or in trust for the churchwardens and overseers of the poor, or the overseers only, or the guardians of any parish, or otherwise for the benefit of a parish, or to or in trust for the guardians of a union, for the purpose of providing a workhouse or asylum, is good without enrolment: 7 & 8 Vict. c. 101, s. 73.
Express power to devise land. Greenwich Hospital.	In many cases power to devise land to a particular charitable institution, or for a particular charitable purpose, is expressly given. Thus, under 28 & 29 Vict. c. 89, s. 43, any person may, notwithstanding any statute restraining alienation in mortmain or dispositions for charitable uses by deed or will, give property for any estate or interest for the benefit of Greenwich Hospital.
Other instances.	Other instances are the Seamen's Hospital Society (3 & 4 Will. IV. c. 9, ss. 1 and 2, as to land up to the yearly value of 12,000 <i>l.</i>), the Bath Infirmary (19 Geo. III. c. xxiii., and see <i>Makeham v. Hooper</i> , 4 Bro. C. C. 153), and University College Hospital (32 & 33 Vict. c. xxiii., and see <i>Re Bradley, Oldershaw v. Governesses Benevolent Institution</i> , 3 Times L. R. 668).
Church Building Act, 43 Geo. III. c. 108.	Under the Church Building Act (43 Geo. III. c. 108) power is given to devise land to a limited amount for the purposes mentioned in the Act: see <i>post</i> , pp. 435 <i>et seq.</i>
Recreation grounds,	Under sect. 7 of the Recreation Grounds Act, 1859 (22 Vict. c. 27), bequests

of personal property up to 1,000*l.* for purchasing and maintaining recreation grounds are valid: see *ante*, p. 425.

By 42 Geo. III. c. 116, s. 50, power is given to any person by will or otherwise, or to any corporation or company, to give any sum or sums of money to be applied in redeeming the land-tax on any manors, messuages, lands, tenements or hereditaments settled to charitable uses, any Statute of Mortmain or other statute to the contrary notwithstanding.

Sect. 162 of the same Act renders valid a gift or disposition of land-tax, redeemed or purchased, made by the person or persons entitled thereto by deed, will or otherwise for the augmentation of a living: see further as to the augmentation of benefices, *post*, pp. 434 *et seq.*

It has been further held that a mere power to acquire land by will has the effect of excluding Part II. of this Act, even though no express authority to persons to devise is given.

In *Perring v. Trail*, L. R. 18 Eq. 88, the Act of Parliament which incorporated the Westminster Hospital empowered it by will, gift, purchase, or otherwise to obtain, acquire, hold and retain land for the purposes of the charity; and also by will, gift, purchase, or otherwise to obtain, acquire, hold and maintain for the purposes of the charity any kind of personal estate, including moneys secured on mortgage or charged on land. It was held by Malins, V.-C., that there was implied in those words a power to devise land for the use of the charity. And the Vice-Chancellor said (at p. 91), "It is clear that if no one could give any land to the charity by will, it could not take any land by devise, and could never become possessed of any. I think, therefore, that, in order to give the words of the Act any effect, I must hold that persons are at liberty to devise land for its benefit." See also *Robinson v. Governors of London Hospital*, 10 Hare, at pp. 24, 25; *Harrison v. Corporation of Southampton*, 2 Sm. & Giff. 387; and *Luckcraft v. Pridham*, 6 Ch. D. at pp. 212, 213.

It should be observed, however, that in cases in which the language of the special statute is similar to that which came under consideration in *Perring v. Trail*, Part II. of the present Act is excluded only so far as relates to assurances by will. So far as regards assurances *inter vivos*, the language of the special Act, not being inconsistent with the provisions of 9 Geo. II. c. 36, did not operate as a *pro tanto* repeal of them. In such a case, therefore, there is no exemption to be preserved by the present section. The principle of *Nethersole v. School for the Indigent Blind*, and *Chester v. Chester* (*ante*, p. 430), would accordingly apply, and such assurances would not be valid unless they satisfied the statutory requirements.

Thus, St. George's Hospital is enabled, by will, gift or purchase, to acquire and hold land up to the yearly value of 20,000*l.*, and to dispose of the same, notwithstanding the Statutes of Mortmain: 4 & 5 Will. IV. c. xxxviii. s. 1. So, also, Westminster Hospital (6 & 7 Will. IV. c. xx. s. 6), and Middlesex Hospital: 6 & 7 Will. IV. c. vii. s. 4.

By 26 Geo. II. c. 22, s. 14, the trustees of the British Museum were incorporated, and enabled to purchase and take lands up to 500*l.* a year, the Statute of Mortmain or other laws to the contrary notwithstanding; and by 5 Geo. IV. c. 39, s. 3, the trustees are empowered to purchase and take lands, and accept any gifts, grants, devises, and bequests of land, or any interest therein, to any amount. Before the latter Act, a gift of the produce of land for the British Museum was void: *Trustees of British Museum v. White*, 2 S. & S. 594; 3 Moo. & P. 689.

Sect. 8. (a)

22 Vict. c. 27.
Redemption
of land tax.

Gift of
redeemed
land-tax for
augmenting
livings.

Power to take
land by will.

Perring v.
Trail.

Extent of
exemption.

St. George's
Hospital, &c.

British
Museum.

Sect. 8.

(a)

Department
of Science and
Art.
Cemeteries.

So, also, the Department of Science and Art: 38 & 39 Vict. c. 68.

By the Public Health (Interments) Act, 1879, 42 & 43 Vict. c. 31, s. 2, a local authority under the Public Health Act, 1875, 38 & 39 Vict. c. 55, is empowered to accept a donation of land for the purpose of a cemetery, and a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery. See further, *post*, p. 437.

Augmentation of Benefices, Church Building, &c.

Augmenta-
tion of
benefices.

Owners of impropriations, tithes, or portions of tithes, in any parish or chapelry, may annex the same to the parsonage, or settle the same for the benefit thereof, without licence in mortmain; and if the same do not exceed 100l. a year, the parson, vicar, and incumbent may take and purchase the same, without licence in mortmain: 17 Car. II. c. 3, ss. 7, 8; 29 Car. II. c. 8; 1 & 2 Will. IV. c. 45.

See, further, as to annexing tithes to a parsonage or vicarage, 6 & 7 Vict. c. 37, s. 25; 13 & 14 Vict. c. 94, s. 23; and *Denton v. Lord John Manners*, 2 De G. & J. 675.

Gifts of redeemed land tax by deed, will, or otherwise, for the augmentation of livings are valid: 42 Geo. III. c. 116, s. 162.

Queen Anne's
Bounty.

Under 2 & 3 Anne, c. 20, ss. 4, 5, land may be given, by deed or will, to the Governors of Queen Anne's Bounty, who have full capacity to purchase, take, and hold the same, without any licence, notwithstanding the Statute of Mortmain; and by 43 Geo. III. c. 107, it is declared that the above provision shall remain in force, notwithstanding 9 Geo. II. c. 36. As to the effect of these Acts, cf. *Luckcraft v. Pridham*, 6 Ch. D. 205, *ante*, pp. 429, 430. Such governors may also accept devises of purchased land tax: 42 Geo. III. c. 116, s. 161.

By 1 Geo. I. st. ii. c. 10, s. 4, churches, curacies, and chapels, augmented by the Governors of Queen Anne's Bounty, are made perpetual cures and benefices, and the ministers licensed thereto are endowed with a legal capacity to take in perpetuity all lands granted to, or purchased for, them by such governors.

Parsonage
houses.
17 Geo. III.
c. 53.
43 Geo. III.
c. 107.

Under 17 Geo. III. c. 53, s. 10, a convenient habitation, and land of a certain quantity, according to the value of the living, may be purchased to be held with the living.

The Act of 43 Geo. III. c. 107, s. 3, empowers the Governors of Queen Anne's Bounty to purchase a suitable residence for the minister of a living augmented by them.

And by 55 Geo. III. c. 147, s. 12, a general power is given to all owners of land to convey to the parson, vicar, or other incumbent of an ecclesiastical benefice, any house or land in exchange for a parsonage house or glebe, and to sell and convey to any such parson, vicar, or other incumbent, lands not exceeding twenty acres, with the necessary buildings.

7 Geo. IV.
c. 66

The next Act, 7 Geo. IV. c. 66, s. 1, provides that all messuages, buildings, and lands, to be purchased for the use of benefices under that Act, or under 17 Geo. III. c. 53, s. 10; 43 Geo. III. c. 107, s. 3; or 55 Geo. III. c. 147, s. 12, shall be conveyed to the parson, vicar, and other incumbent, for a residence, and shall be annexed to the benefice, and held by the parson, vicar, or incumbent, for the time being, without any licence, notwithstanding the Statute of Mortmain or other law to the contrary.

1 & 2 Vict.
c. 106.

By 1 & 2 Vict. c. 106, ss. 70 and 71, where new buildings are necessary for the residence of the incumbent, the bishop may purchase land and a house

for that purpose, raising the money by mortgage of the glebe, tithes, &c. Buildings and land so purchased are to be conveyed to the patron in trust for the incumbent for the time being.

Sect. 8.
(a)

28 & 29 Vict.
c. 69.

By 28 & 29 Vict. c. 69, passed for the purpose of extending 17 Geo. III. c. 53, and 7 Geo. IV. c. 86 (and other Acts therein recited), the incumbent of a benefice is authorized (sect. 1), for the purposes of those Acts, and of 55 Geo. III. c. 147, to borrow on mortgage, for purchasing land to be held with the parsonage, or building offices, stables, &c., or for restoring the fabric of the chancel of the church (where the incumbent is liable therefor), or otherwise, as therein mentioned, a sum of money not less than 100*l.*, or more than three years' net income of the benefice. And by sect. 2 the Governors of Queen Anne's Bounty may sell lands, tithes, and other hereditaments given to them for their general purposes.

By sect. 4 of the Act the principal officer of any public department holding lands on behalf of her Majesty, or for the public use, and all corporations aggregate or sole, trustees, guardians, commissioners, or other persons having the control of hospitals, schools, charitable foundations, or other public institutions, and all other persons by the Lands Clauses Consolidation Act, 1845, empowered to sell and convey lands, are empowered to convey, by way of gift or sale, in fee simple or otherwise, any messuages, lands, or hereditaments, to be used for parsonages or residences for incumbents, or gardens, or appurtenances thereto, or for sites, or for enlarging sites therefor. But no assurance (except in the case of a sale for fair value), may include more than one acre.

Sect. 9 of 29 & 30 Vict. c. 111 authorises the Ecclesiastical Commissioners to take a conveyance of, and hold without licence in mortmain, any lands or hereditaments which they may consider suitable to be annexed to a benefice, and to appropriate to such purpose cash or stock in their hands belonging to a benefice.

29 & 30 Vict.
c. 111.

Parcels of waste, not exceeding one acre, may be granted by the lord of a manor for the erection of a school or schoolmaster's house: 4 & 5 Vict. c. 38, s. 2.

School, &c.
4 & 5 Vict.
c. 38.

By 43 Geo. III. c. 108, s. 1, any person having in his own right any estate or interest in land, or any property of or in goods or chattels, is authorised, by deed enrolled under 27 Hen. VIII. c. 16, or by will duly executed three months before the death of the grantor or testator, to vest in any person or body politic or corporate, lands not exceeding five acres, or goods and chattels not exceeding 500*l.*, towards erecting, rebuilding, repairing, purchasing, or providing any church or chapel of the established church, or a residence for the officiating minister, or outbuildings, offices, churchyard, or glebe for the same. But nothing in the Act extends to enable infants or persons of non-sane memory, or women covert, without their husbands, to make any such gift, grant, or alienation. And the grantees are enabled to take as well from persons charitably disposed to give the same, as from others willing to sell to them, lands, tenements, or chattels without licence, notwithstanding the Statute of Mortmain. This Act will be found in App. I. to this Book, *post*. By 51 Geo. III. c. 115, the king is empowered to grant for similar purposes lands within the survey of the Court of Exchequer or the Duchy of Lancaster, not exceeding five acres in one grant, and the owners of the fee simple of a manor are empowered to grant five acres of the waste to the rector, vicar, or other minister for the purpose of erecting or enlarging a church or

Church
Building Act.
43 Geo. III.
c. 108.

51 Geo. III.
c. 115.

- Sect. 8.** chapel of the Church of England, or making or enlarging a churchyard, or
 (a) as glebe lands.
- A grant under this last enactment overrides rights of common and manorial rights of that nature, but not other customary rights, as, for instance, a customary right to use the land as a village green: *Forbes v. Ecclesiastical Commissioners for England*, L. R. 15 Eq. 51.
- Repeal as to Ireland.** The Act 43 Geo. III. c. 108, was repealed as to Ireland by 14 & 15 Vict. c. 71, which Act has since been itself repealed by the Stat. Law Rev. Act, 1875.
- Decisions on 43 Geo. III. c. 108.** A devise of land, in order to come within 43 Geo. III. c. 108, must be a devise of the land itself for the purposes mentioned in the Act. The limit imposed upon a gift of chattels could not be exceeded by the devise of giving the proceeds of sale of land not exceeding five acres: *Incorporated Church Building Society v. Coles*, 5 De G. M. & G. 324. A gift of the proceeds of sale of specific land is in fact not within the scope of the Act, and such a gift is entirely void: *ibid.*; and cf. *Champney v. Davy*, 11 Ch. D. 949. But a conveyance reserving a life estate, being considered equivalent to a devise, may be made under it: *Fisher v. Brierly*, 1 De G. F. & J. at p. 664, per Turner, L. J.
- Grant in pursuance of secret trust.** The Act has been held to authorise a gift of land, with an unconsecrated building thereon licensed for public worship, in pursuance of a secret trust to convey the land or building for a parish or district church in perpetuity: *O'Brien v. Tyssen*, 28 Ch. D. 372.
- Repair of churchyard or clock.** A bequest of money, not exceeding 500*l.*, to be applied in the repair of a churchyard, was held to be within the Act: *Re Vaughan, Vaughan v. Thomas*, 33 Ch. D. 187. So, also, a bequest for providing a church clock: *Re Hendry, Watson v. Blakeney*, 56 L. T. N. S. 908.
- Tombs.** A bequest for building or keeping in repair the vaults or tombs of the testator or his family not within a church, not being charitable, does not come within 43 Geo. III. c. 108: *Re Rigley's Trusts*, 36 L. J. Ch. 147; *Re Vaughan, Vaughan v. Thomas*, 33 Ch. D. 187; and see *ante*, p. 7.
- See also, with regard to this Act, *Girdlestone v. Creed*, 10 Hare, 480; *Re Ireland's Will*, 12 L. J. Ch. 381; *Dixon v. Butler*, 3 Y. & C. Ex. 677.
- Apportionment.** As to apportionment in the case of a gift partly rendered valid by the Act and partly invalidated by 9 Geo. II. c. 36, see *Sinnett v. Herbert*, L. R. 7 Ch. 232; *Champney v. Davy*, 11 Ch. D. 949; and *ante*, p. 61.
- Married women.** The exclusion of married women without their husbands from exercising the powers conferred by 43 Geo. III. c. 108, is not removed by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75): *Re Smith's Estate, Clements v. Ward*, 35 Ch. D. 589.
- Later Church Building Acts.** By 58 Geo. III. c. 45, s. 33, the commissioners appointed for carrying into execution the Act for building additional churches in populous parishes are empowered to accept and take any building and land, not exceeding what may be sufficient for a church, chapel, or churchyard, and approach thereto, from any person willing to give the same; and such site is to be devoted to ecclesiastical purposes. The commissioners may similarly accept and take any house, garden, and appurtenances, not exceeding ten acres in the whole, for the residence of the incumbent, or land of the same amount for erecting the house and making the garden, and the same is to vest in the incumbent for the time being.
- By sect. 34 of the same Act the Commissioners of Woods and Forests (with the consent of the Treasury), the Duchy of Lancaster, and any body politic,

corporate or collegiate, or corporation, are empowered to grant any such building or site for such church or the residence of the incumbent. See also 59 Geo. III. c. 134, ss. 37, 38; 3 Geo. IV. c. 72, ss. 1—3, 8, 26; 5 Geo. IV. c. 103; and 1 & 2 Will. IV. c. 38, s. 9; *Att.-Gen. v. Bishop of Manchester*, L. R. 3 Eq. 436.

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(a)

By 1 & 2 Vict. c. 107, s. 9 (see also sects. 6 and 8), the powers conferred by 58 Geo. III. c. 45, are extended to transfers by way of sale or exchange only of land, not exceeding five acres, for a site for the residence of an incumbent. c. 107.

By 3 & 4 Vict. c. 60, s. 2, a licence in mortmain is rendered unnecessary in cases of endowment, grant, or conveyance under the Church Building Acts; but by sect. 3 the provisions of the Mortmain Acts are to apply where the endowment exceeds the annual value of 300*l*. See also sect. 17. c. 60.

Again, any person or body corporate may, under 6 & 7 Vict. c. 37, s. 22, by deed enrolled under 27 Hen. VIII. c. 16, in the case of lands, tithes, or hereditaments (but without deed in the case of goods and chattels), or by will, vest in the Ecclesiastical Commissioners their lands, tithes, or hereditaments, goods, and chattels for the endowment or augmentation of the income of ministers or of perpetual curates of the Church of England, or for providing any church or chapel for the purposes of and subject to the provisions of the Act, and such Commissioners have full capacity to purchase, take, and hold, for the purposes aforesaid, both from persons charitably disposed to give the same and from persons willing to sell the same, lands, tithes, hereditaments, goods, or chattels without licence, the Statute of Mortmain or other law to the contrary notwithstanding: see also sect. 12 of the same Act, and 7 & 8 Vict. c. 94, ss. 7, 11, and 14 & 15 Vict. c. 97, s. 8. c. 37.

In *Baldwin v. Baldwin* (No. 2), 22 Beav. 419, a testator bequeathed a sum to trustees to erect and endow a church at a place in a certain parish where a separate district had not been created under 6 & 7 Vict. c. 37, if within a limited number of years after his death his object could be legally carried into effect. It was held that the bequest was not void, and that the Ecclesiastical Commissioners would become entitled to it if within the stated period such a district should be constituted under the provisions of the statute.

By 19 & 20 Vict. c. 104, s. 4, sect. 22 of 6 & 7 Vict. c. 37 (*supra*), is extended to authorise such grants as therein mentioned to be made by ecclesiastical and collegiate corporations; and by 28 & 29 Vict. c. 42, s. 7, the same section is extended to authorise gifts of lands or goods for the purpose of purchasing tithes, or gifts of tithes, with a view to their annexation to a district church. c. 104. c. 42.

Under 30 & 31 Vict. c. 133, s. 4, land may be granted in fee simple for the enlargement of churchyards or burial places, as it might, under the School Sites Acts (see *post*, p. 438), be granted for the site of a school. The conveyance must be in the form provided by sect. 5 of the Act, and is "good and valid without any licence or writ of *ad quod damnum*, the Statutes of Mortmain or any other statute or law to the contrary notwithstanding." (Sect. 4.) **Churchyards.** 30 & 31 Vict. c. 133.

And, as we have seen (*ante*, p. 434), local authorities under the Public Health Act, 1875, are by the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), empowered to accept donations of land and other property for providing cemeteries. **Cemeteries.** 42 & 43 Vict. c. 31.

The Bishopricks Act, 1878, 41 & 42 Vict. c. 68, s. 2, empowers the Ecclesiastical Commissioners to receive gifts or bequests of real and personal **New bishop-** ricks.

Sect. 8.
(a)

41 & 42 Vict.
c. 68.

property, not exceeding the limits prescribed by the Act, for the endowment fund of the bishoprics therein mentioned, and the power of the donors to give, and of the Ecclesiastical Commissioners to receive, such gifts are the same as those enacted in 2 & 3 Anne, c. 11, and 43 Geo. III. c. 107, for enabling donors to vest gifts in the Governors of Queen Anne's Bounty. See, also, the Truro Bishopric and Chapter Acts Amend. Act, 1887 (50 Vict. c. 12), as to the bishopric of Truro.

**Places of
Worship Sites
Acts.**

Under the Places of Worship Sites Act, 1873, 36 & 37 Vict. c. 50, land not exceeding one acre may be given, sold, or exchanged for the site of a place of worship or residence of the officiating minister or burial place (sect. 1); and by sect. 5 sites of the like extent may similarly be granted for any of the purposes of the Church Building Acts to the Ecclesiastical Commissioners, or as they shall direct, and the Ecclesiastical Commissioners may also act as trustees for the purpose of taking and holding any sites granted under the Act. By sect. 4 assurances under the Act continue valid, if otherwise lawful, although the donor or grantor die within twelve months from the execution thereof. (See note (m) to sect. 4, *ante*, p. 395.)

The Places of Worship Sites Amendment Act, 1882, 45 & 46 Vict. c. 21, provides (sect. 1) that the last-mentioned Act shall be construed to authorise any corporation, ecclesiastical or lay, sole or aggregate, and any officers, justices of the peace, trustees, or commissioners holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, to convey or enfranchise for the purposes of the Act such quantity of land as therein mentioned. But property held on trust for charitable purposes may not be so granted without the consent of the Charity Commissioners.

**School Sites
Acts, 1841 to
1851.**
**School Sites
Act, 1841.**

By the School Sites Act, 1841, 4 & 5 Vict. c. 38, s. 2, land not exceeding one acre may be conveyed by way of gift, sale, or exchange as a site for a school for poor persons, or the residence of the schoolmaster or mistress, or otherwise for the education of poor persons. Sect. 6 authorises corporations, ecclesiastical or lay, sole or aggregate, officers, justices of the peace, trustees, or commissioners holding land for public, ecclesiastical, parochial, charitable, or other objects, to make such grants, and, in the case of trustees, a majority of them assembled at a meeting duly convened may act. By sect. 7 all grants of land or buildings, or any interest therein, for the education of poor persons, whether taking effect under that Act or other authority of law, may be made to any corporation sole or aggregate, or to several corporations sole, or to trustees, to be held for the purposes aforesaid: see *Fisher v. Brierly*, 1 De G. F. & J. 643; 10 H. L. C. 159.

**School Sites
Act, 1844.**

Under the School Sites Act, 1844, 7 & 8 Vict. c. 37, s. 3, deeds executed under the last-mentioned Act, without valuable consideration, continue valid, if otherwise lawful, although the donor die within twelve months from the execution.

**School Sites
Act, 1849.**

Again, by the School Sites Act, 1849, 12 & 13 Vict. c. 49, s. 4, land not exceeding five acres may be conveyed by way of gift, sale, or exchange, to any corporation, sole or aggregate, or trustees, for the erection of school buildings and premises for educating and boarding persons intended to be masters and mistresses of elementary schools, and for the residence of the principal or master or mistress and other officers of such institution, and such gift, sale, or exchange continues valid although the grantor die within twelve months. And, under sect. 5, an absolute owner lawfully entitled to convey land to trustees upon any charitable use may convey the same to any

corporation for the purposes of 4 & 5 Vict. c. 38, and 7 & 8 Vict. c. 37, and that Act, or for the endowment of such schools.

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(a)

By 15 & 16 Vict. c. 49, the provisions of the School Sites Acts, 1841, 1844, and 1849, and of other Acts therein mentioned, are extended to schools or colleges for the religious or educational training of the sons of yeomen or tradesmen, or others, or for the theological training of candidates for holy orders, partly maintained by charitable aid, and partly self-supporting; and the like powers are given in relation to the conveyance and endowment of sites, subject to certain provisos therein mentioned. See also sect. 7, sub-s. 2, of the present Act, *ante*, pp. 425, 426.

Schools and colleges for religious and educational training.

The Elementary Education Act, 1870, 33 & 34 Vict. c. 75, provides, by sect. 20, that the School Sites Acts, 1841 to 1851, shall apply to a School Board in the same manner as if they were the trustees or managers of a school within the meaning of those Acts, and land may be acquired under any of such Acts, or partly under one and partly under another.

School boards.

Similar provisions to those contained in the School Sites Acts are contained in 17 & 18 Vict. c. 112 with reference to institutions for the promotion of science, literature, and the fine arts, and otherwise, as therein mentioned. As to this Act, see *ante*, p. 428.

Science, literature, and the fine arts.
17 & 18 Vict. c. 112.

The Recreation Grounds Act, 1859, 22 Vict. c. 27, also contains provisions of a like character. As to this Act see *ante*, pp. 432, 433.

Recreation grounds.

PART IV.—SUPPLEMENTAL.

9. Any assurance (a) of land (a) which is by this Act required to be made by deed (b) may be made by a registered disposition under the provisions of the Land Transfer Act, 1875, or of any Act amending the same, and any assurance so made shall be exempt from the provisions of this Act as to execution in the presence of witnesses, and as to enrolment in the Central Office of the Supreme Court.

Adaptation of law to system of land registration.
38 & 39 Vict. c. 87.

(a) Defined by sect. 10, *post*.

(b) See sect. 4, *ante*, pp. 386, 387.

10. In this Act, unless the context otherwise requires,—

Definitions.

(i.) "Assurance" includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, will, or other instru-

Sect. 10.

ment; and "assure" and "assuror" have meanings corresponding with assurance.

(ii.) "Will" includes codicil.

(iii.) "Land" includes tenements and hereditaments corporeal and incorporeal of whatsoever tenure, and any estate and interest in land (a).

(iv.) "Full and valuable consideration" includes such a consideration either actually paid upon or before the making of the assurance, or reserved or made payable to the vendor or any other person by way of rent, rentcharge, or other annual payment in perpetuity, or for any term of years or other period, with or without a right of re-entry for nonpayment thereof, or partly paid and partly reserved as aforesaid (b).

(a) The definition of land is taken from sect. 2 of 25 & 26 Vict. c. 17, repealed by sect. 13 of this Act.

Copyholds.

This definition includes copyholds. It has been stated (*ante*, p. 398) that copyholds were within 9 Geo. II. c. 36. They were also within the old Mortmain Acts: Scriven, Copyh. 6th ed. p. 102.

How conveyed.

Copyholds are conveyed to a charity by surrender to a third person, either simpliciter or upon the trusts declared by a deed of even date; and the charitable trusts are declared by a deed of even date referring to the surrender: Scriven, Copyh. *supra*.

(b) See n. (j) to sect. 4 of this Act, *ante*, p. 393.

Extent of Act.

11. This Act shall not extend to Scotland or Ireland (a).

Old Act.

(a) Sect. 6 of 9 Geo. II. c. 36, expressly provided that that Act should not apply to Scotland; and sect. 6 of 24 & 25 Vict. c. 9 contained a similar provision both as to Scotland and Ireland.

Scotland.

A legacy of money to be laid out in the purchase of heritable securities (*Oliphant v. Hendrie*, 1 Bro. C. C. 571), or in land (*Mackintosh v. Townsend*, 16 Ves. 330; *Forbes v. Forbes*, 18 Beav. 552) in Scotland, is within the exemption. See also *Macdonald v. Macdonald*, L. R. 14 Eq. 60.

A bequest of money to be laid out in land for a Scotch charity is, however, not of itself sufficient to show that land in Scotland only is to be purchased, and is not therefore within the exemption: *Att.-Gen. v. Mill*, 5 Bli. N. S. 593.

Proceeds of land in England cannot be given for a Scotch charity: *Curtis v. Hutton*, 14 Ves. 537. Nor can land in India be so given unless certain conditions are complied with: *Macdonald v. Macdonald*, *supra*.

Ireland.

The Act 9 Geo. II. c. 36 was also not applicable to Ireland: *Campbell v. Earl of Radnor*, 1 Bro. C. C. 271; *Baker v. Sutton*, 1 Keen, at p. 234; *Att.-*

Gen. v. Power, 1 Ball & B. 145; *Pollock v. Day*, 14 Ir. Ch. R. 297; and see *Att.-Gen. v. Flood*, Hayes & J. App. xxi.

Sect. 11.
(a)

The mode in which gifts for pious and charitable uses may be made of realty in Ireland, is regulated by 7 & 8 Vict. c. 97, 30 & 31 Vict. c. 54, and 34 & 35 Vict. c. 102.

A bequest of money to be laid out in Ireland for charitable purposes which was good before the passing of 7 & 8 Vict. c. 97 (*Campbell v. Earl of Radnor*, 1 Bro. C. C. 271; *Baker v. Sutton*, 1 Keen, at p. 234; *Att.-Gen. v. Power*, 1 Ball & B. 154), has not been rendered invalid by that Act. Thus, in *Pollock v. Day* (14 Ir. Ch. R. 371), it was held by the Court of Appeal in Ireland that a bequest of money for the purpose of building a church in Ireland was not within 7 & 8 Vict. c. 97, s. 16, and was therefore valid, though the will was made within three months of the testator's death.

The Act 9 Geo. II. c. 36 did not apply to India (*Mayor of Lyons v. East India Co.*, 1 Moo. P. C. 175; *Mitford v. Reynolds*, 1 Ph. 185, 192), or, in general, to the colonies, as New South Wales (*Whicker v. Hume*, 1 De G. M. & G. 506; 7 H. L. C. 124), Canada (*Abbott v. Fraser*, L. R. 6 P. C. 96), the West Indies (*Att.-Gen. v. Stewart*, 2 Mer. 143), and Penang (*Choah Choon Nish v. Spottiswoode*, Wood's Oriental Cases; *Yeap Cheah Neo v. Ong Cheng Neo*, L. R. 6 P. C. 381).

A bequest of money arising from or connected with land in England, to be laid out in land in Scotland, Ireland, or the Colonies for the purpose of charity, is void: *Curtis v. Hutton*, 14 Ves. 537; *Att.-Gen. v. Mill*, 5 Bli. N. S. 593; 2 Dow & Cl. 393.

Money arising from land in England to be laid out in land abroad.

The Act does not apply to real property possessed by British subjects in foreign countries: *Beaumont v. Oliveira*, L. R. 4 Ch. 309; *Re Arnold, Ravenscroft v. Workman*, 37 Ch. D. 637.

Real property possessed by British subjects abroad.

12. Nothing in this Act shall affect the operation or validity of any charter (a), licence (b), or custom (c) in force at the passing of this Act enabling land to be assured or held in mortmain.

Savings for existing customs, &c.

(a) Charters of incorporation commonly contain a clause dispensing, up to lands of a specified value, with the Statutes of Mortmain: see Shelf. Mortm. 40, 41; *Robinson v. Governors of London Hospital*, 10 Hare, 19; *Re Bradley, Oldershaw v. Governesses' Benevolent Institution*, 3 Times L. R. 668. As to what words are sufficient to amount to a licence in mortmain, see *Att.-Gen. v. Flood*, Hayes & J. App. at p. xxxiii.

(b) As to licences in mortmain, see sect. 2 of this Act, *ante*, p. 384, and note thereto.

(c) By the custom of London, confirmed by Magna Charta (9 Hen. III. c. 9), citizens and freemen of London may devise in mortmain (*City of London's Case*, 8 Co. 129a); and as Magna Charta was not expressly repealed as regards the custom of London by 9 Geo. II. c. 36, it was considered that citizens and freemen of London might still devise their lands within the city in mortmain: 2 Bac. Abr. Charit. Uses (B.); Customs of London (A.); Bro. Abr. London, pl. 13, p. 70; *City of London's Case*, *supra*. But see dictum of Arden, M. R., in *Att.-Gen. v. Hartley*, 4 Bro. C. C. 412; Highm. Mortm. p. 127.

Custom of London.

Sect. 12.

(c)

The custom, however, is confined to lands in the City of London: *Middleton v. Cater*, 4 Bro. C. C. 409.

Repeal.

13.—(1.) The Acts specified in the Schedule to this Act are hereby repealed, from and after the passing of this Act, to the extent specified in the third column of that schedule:

Provided that this repeal shall not affect—

- (a) Any enactment not hereby repealed referring to any enactment hereby repealed, except that in lieu of that reference the unrepealed enactment shall be construed as if it referred to the corresponding provisions of this Act; or
- (b) The past operation of any enactment hereby repealed, or any instrument or thing executed, done, or suffered before the passing of this Act; or
- (c) Any right, obligation, or liability acquired, accrued, or incurred under any enactment hereby repealed; or
- (d) Any action, proceeding, or thing pending or uncompleted at the time of the passing of this Act.

(2.) Whereas by the preamble to the Act of the forty-third year of Elizabeth, chapter four (being one of the enactments hereby repealed), it is recited as follows:

“Whereas landes tenement^e rentes annuities pfittes hereditamentes, goodes chattels money and stockes of money, have bene heretofore given limitedd appointed and assigned, as well by the Queenes moste excellent Majestie and her moste noble progenitors, as by sondrie other well disposed psons, some for releife of aged impotent and poore people, some for maintenance of sicke and maymed souldiers and marriners, schooles of learninge, free schooles and schollers in univ^{er}sities, some for repaire of bridges portes havens causwaies churches seabankes and highewaies, some for educa^{ti}on and p^{ro}ferment of orphans, some for or towards reliefe stocke or maintenance for howses of correc^{ti}on, some for mariages of poore maides, some for supporta^{ti}on ayde and helpe of younge tradesmen, handieraftesmen and psons decayed, and others for releife or redemption of prisoners or captives, and for aide or ease of any poore inhabitant^e conc^{er}ninge paymente of fifteenes, settinge out of souldiers and other taxes; whiche landes tenements rents annui-

ties pftts hereditaments goodes chattells money and stockes of money nevtheles hav not byn imployed accordinge to the charitable intente of the givers and founders thereof, by reason of fraudes breaches of truste and negligence in those that shoulde pay delyver and imploy the same:" and whereas in divers enactments and documents reference is made to charities within the meaning, purview, and interpretation of the said Act:

Sect. 13.

Be it therefore enacted that references to such charities shall be construed as references to charities within the meaning, purview, and interpretation of the said preamble.

14. This Act may be cited as the Mortmain and Charitable Uses Act, 1888. Short title.

SCHEDULE.

Sect. 13.

Acts repealed.

Note.—This Schedule is to be read as referring to the Revised Edition of the Statutes prepared under the direction of the Statute Law Committee, in all cases of statutes included in that edition as already published.

The chapters of the statutes (before the division into separate Acts) are described by the marginal abstracts given in that edition.

Session and Chapter.	Title.	Extent of Repeal.
7 Edw. I.	<i>Statut' de Viris Religiosis.</i>	The whole Act.
13 Edw. I. c. 32 . .	Bremedy in case of mortmain under judgements by collusion.	The whole chapter.
18 Edw. III. st. 3, c. 3	Prosecutions against religious persons for purchasing lands in mortmain.	The whole chapter.
15 Ric. II. c. 5 . . .	St. 7, Edw. I. de Religiosis. Converting land to a churchyard declared to be within that statute. Mortmain where any is seised of lands to the use of spiritual persons. Mortmain to purchase lands in gilds, fraternities, offices, commonalties, or to their use.	The whole chapter.
23 Hen. VIII. c. 10.	An Acte for feoffments and assurance of landes and tenements made to the use of any parisshe Church, Chapell, or suche like.	The whole Act.
43 Eliz. c. 4	An Acte to redresse the misemployment of landes, goodes, and stockes of money heretofore given to charitable uses.	The whole Act.
7 & 8 Will. III. c. 37	An Acte for the encouragement of charitable gifts and dispositions.	The whole Act.
9 Geo. II. c. 36 . . .	An Act to restrain the disposition of lands whereby the same become unalienable.	The whole Act, except so much of section five as is unrepealed.

Session and Chapter.	Title.	Extent of Repeal.
9 Geo. IV. c. 85 . .	An Act for remedying a defect in the titles of lands purchased for charitable purposes.	The whole Act.
24 & 25 Vict. c. 9 . .	An Act to amend the law relating to the conveyance of land for charitable uses.	The whole Act.
25 & 26 Vict. c. 17 .	An Act to extend the time for making enrolments under the Act passed in the last session of Parliament, intituled "An Act to amend the law relating to the conveyance of land for charitable uses, and to explain and amend the said Act."	The whole Act.
27 & 28 Vict. c. 13 .	An Act to further extend the time for making enrolments under the Act passed in the twenty-fourth year of the reign of her present Majesty, intituled "An Act to amend the law relating to the conveyance of lands for charitable uses, and otherwise to amend the said law."	The whole Act.
29 & 30 Vict. c. 57 .	An Act to make further provision for the enrolment of certain deeds, assurances, and other instruments relating to charitable trusts.	The whole Act.
31 & 32 Vict. c. 44 .	An Act for facilitating the acquisition and enjoyment of sites for buildings for religious, educational, literary, scientific, and other charitable purposes.	Sections one and two.
34 & 35 Vict. c. 13 .	An Act to facilitate gifts of land for public parks, schools, and museums.	The whole Act.
35 & 36 Vict. c. 24 .	An Act to facilitate the incorporation of trustees of charities for religious, educational, literary, scientific, and public charitable purposes, and the enrolment of certain charitable trust deeds.	Section thirteen.

PART III.

CHARITY COMMISSION ACTS.

INTRODUCTION.

It is proposed in this Introduction to trace briefly the history of Charity Commissions in England from the time of the Statute of Elizabeth (*a*) to the present day. History of
Charity Com-
missions.

The Statute of Elizabeth, which has now been repealed by the Stat. of Eliz. Mortmain and Charitable Uses Act, 1888 (*b*), authorized the Lord Chancellor, or Keeper of the Great Seal (*c*), and the Chancellor of the Duchy of Lancaster, as regards lands within the County Palatine of Lancaster, to award commissions to the bishop of every diocese, and his chancellor and other persons, authorizing them to inquire by a jury into all abuses, breaches of trusts, negligences, mis-employments, non-employments, frauds, &c., relating to property belonging to charities, and to make orders for their faithful employment, subject to an appeal to the Lord Chancellor, or Lord Keeper of England, or the Chancellor of the County Palatine of Lancaster, within their several jurisdictions (*d*). The colleges of the Universities of Oxford and Cambridge, and of Westminster, Eton, and Winchester, and cathedral and collegiate churches were exempted from the Act (*e*); nor did the Act extend to any city, town corporate, or lands or tenements given to charitable uses within them, where special governors were appointed for their government, or to any college, hospital, or free school, which had special (*f*) visitors or governors, or overseers,

(*a*) 43 Eliz. c. 4.

(*b*) *Ante*.

(*c*) Lord Brougham held that a Commission issued in 1649, in Cromwell's time, by Lords Commissioners was a nullity: *Att.-Gen. v. Governors of Atherstone School*, 3 My. & K. 544; but Lords Commissioners had, by 1 Will. & M. c. 21, st. 2, the same powers given to them as the Lord Chancellor or Lord Keeper. It seems, moreover, to

have been held that the King might name Commissioners or sign the Commission as well as the Lord Chancellor: Duke, 144; ed. by Bridg. 139.

(*d*) Sect. 1.

(*e*) Sect. 2.

(*f*) This exemption was held not to apply to cases where the visitor had the administration of the funds of the charity, for where the visitors were trustees also, then the Commissioners

appointed by the founders (*g*); and the jurisdiction of the ordinary was not interfered with (*h*). No one might be a commissioner or juror who had or claimed any part of the lands or goods in question (*i*). The estates and interests of purchasers for valuable consideration of money or land, without notice, were not to be impeached by the order of the Commissioners (*j*), but they were to make orders against persons guilty of a breach of trust, and against their heirs, executors, and administrators, to the extent of their assets (*k*). The Commissioners were to have no power over lands assured to King Henry VIII., King Edward VI., or Queen Mary, by Act of Parliament or otherwise (*l*), unless they have been given to charitable uses since the beginning of Queen Elizabeth's reign (*m*). The orders of the Commissioners were to be certified to and carried into execution by the Lord Chancellor or Lord Keeper and the Chancellor of the Duchy, to whom in their respective jurisdictions there was an appeal from the orders of the Commissioners, with full power to annul and vary such orders, and to award costs against persons complaining of orders without just cause (*n*).

Proceedings
under Stat. of
Eliz.

With reference to the proceedings under the Statute of Elizabeth Lord Redesdale in the year 1827 observed (*p*):—"A long train of decisions by the Commissioners is reported in a book called 'Duke's Laws of Charitable Uses' (*q*). Of these proceedings, many were not very consonant to justice; those proceedings, however, were subject to review by the Lord Chancellor; many of them were reviewed, and when reviewed they were found so puzzling, or, at least, not obtaining the ends of justice by an easier mode of proceeding, that, I believe, a Commission has not been issued for a great number of years, it having been found to be much more convenient to return to the old mode of proceeding by information by the Attorney-General."

The last Commission appears to have been issued in the *Case of Kirkby Ravensworth Hospital* (*r*). The proceedings under the statute of Elizabeth, which are often useful in obtaining information with reference to old charities, were filed in the Petty Bag Office.

Inquiries
under later
Acts.

might by their decree reform the abuse of the charitable uses: *Case of Sutton Colefield*, Duke, 68; ed. by Bridg. 643; *Hynshaw v. Corporation of Morpeth*, *ibid.* 69; ed. by Bridg. 242. A limited power of visitation given by the founder of a charity was, however, held not sufficient to deprive the Commissioners of their jurisdiction: *Case of Kirkby Ravensworth Hospital*, 8 East, 221; 15 Ves. 305.

(*g*) Sect. 3.
(*h*) Sect. 4.

(*i*) Sect. 5.
(*j*) Sect. 6.
(*k*) Sect. 7.
(*l*) Sect. 8.
(*m*) Sect. 9.
(*n*) Sect. 10.
(*p*) *Corporation of Ludlow v. Greenhouse*, 1 Bli. N. S. at p. 61.
(*q*) See also Shelf. Mortm. pp. 276--300.
(*r*) 15 Ves. 305.

to have been shamefully abused. The earliest inquiries necessary to be referred to were those made under 26 Geo. III. c. 58 (*s*), by which returns by the ministers, churchwardens, and overseers of every parish were required to be made on oath of all charitable donations within their respective parishes. It appears from a Report on the returns under this Act, made by a Committee of the House of Commons which sat in 1786 and 1788, that out of 13,000 parishes and townships in England and Wales, from which returns had been required, fourteen only had omitted to make a return (*t*), and that the returns which were made showed that many donations had been, and others were in danger of being, lost.

By 52 Geo. III. c. 102 (*u*), an attempt, partially successful, was made to obtain a memorial or statement of the charities in each county, to be registered in the office of the clerk of the peace, thence to be transmitted to the Enrolment Office of the Court of Chancery.

In consequence of the Reports of a Committee of the House of Commons, appointed in the Session of 1816, on the motion of Lord Brougham, and revived in the Sessions of 1817 and 1818, a commission was established, under an Act passed in 1818 (*u*), to make inquiries limited to the Educational Charities for the poor in England and Wales. The Universities of Oxford and Cambridge, and the colleges and halls therein, and several of the larger endowed schools, all cathedral and collegiate churches, and all charities having special visitors, governors, or overseers, and Jewish and Quaker charities, were exempted, but the Commissioners were to report the names of charities having special visitors. This commission made two reports dated respectively the 2nd March and the 5th July, 1819.

Lord Brougham's Commission.

In 1819 a second Act (*v*) was passed, enabling the Crown to increase the number of the Commissioners. It extended their power to all charities for the benefit of poor people in England and Wales, continuing the exemptions of the universities and particular schools mentioned in the former Act, and adding some other exemptions. And by another Act of the same year (*w*), any five or more of the Commissioners were authorized to certify

(*s*) Gilbert's Act, repealed by the Stat. Law Rev. Act, 1871.

(*t*) Fearon's Endowed Charities, pp. 5, 6.

(*u*) 58 Geo. III. c. 91, repealed by the Stat. Law Rev. Act, 1873.

(*v*) 59 Geo. III. c. 81, repealed by the Stat. Law Rev. Act, 1873. This Act exempted from the authority of the Commission "charitable institutions wholly or principally maintained

by voluntary contributions," but it provided that "the management and application of the rents of lands belonging to those institutions for twenty years or more before the passing of the Act" should be subject to their jurisdiction. The exemption was continued throughout the duration of the Commission.

(*w*) 59 Geo. III. c. 91, repealed by the Stat. Law Rev. Act, 1861.

to the Attorney-General such cases as appeared in their judgment to require interference for the recovery of alienated property, or the reform of abuses.

The powers conferred by 59 Geo. III. c. 81, were continued by 5 Geo. IV. c. 58 (*x*), and 10 Geo. IV. c. 57 (*x*), to the 1st July, 1830.

The Commissioners under these Acts made twenty-two further reports, viz., Report 3 to Report 24, both inclusive. None of these reports touched charities having special visitors, except in those cases in which the visitors were also governors acting in the administration of affairs of the charity. In cases of the latter description, the Commissioners claimed and (although with resistance in many cases) exercised their jurisdiction. They adopted and sustained in this respect the rule of construction which had been applied by the Courts to a similar claim in the Statute of Elizabeth. Such cases, however, formed but a small minority of the charities having special visitors; and down to 1830 the bulk of the foundations which were in that condition remained without inquiry (*y*).

The above-mentioned Acts expired, as has been seen, on the 1st July, 1830, and from that date until December, 1831, there was no commission. A third commission was issued on the 22nd December, 1831, under 1 & 2 Will. IV. c. 34 (*z*). That Act discontinued the exemption of charities having special visitors, but Christ's Hospital, St. Bartholomew's, Bridewell, St. Thomas's, and Bethlehem Hospitals, were specially exempted. The Commissioners made five reports, viz., from the 25th to the 29th, both inclusive. The reports made by this commission are more complete than those previously made. "They show, that many of the worst cases of abuse and maladministration were found in charities having special visitors. The powers of special visitors, even where they had been exercised, appeared to be insufficient to control or rectify the more flagrant abuses; and in a large majority of cases, the office of visitor had for years been merely nominal. The condition of the minor grammar schools, having special visitors, was found in many instances deplorable" (*a*).

The fourth and last commission, dated the 22nd Oct., 1835, issued under 5 & 6 Will. IV. c. 71 (*b*), which was, by 7 Will. IV. & 1 Vict. c. 4 (*b*), continued down to 1st July, 1837. Three further reports

(*x*) Repealed by the Stat. Law Rev. Act, 1873.

(*y*) First Report of Commissioners, 4th March. 1819, p. 3. See Fearon's *Endowed Charities*, p. 11.

(*z*) Repealed by the Stat. Law Rev. Act, 1874.

(*a*) Fearon's *Endowed Charities*, p. 12.

(*b*) Repealed by the Stat. Law Rev. Act, 1874.

viz., the 30th, 31st, and 32nd (the last being comprised in six volumes), were made under this commission, whose inquiries were extended to many institutions exempted by the former Acts.

The four successive charity commissions made thirty-two reports, comprised in thirty-eight folio volumes. The number of charities so reported on was 28,880, with an aggregate income of about 1,209,395*l.* (c).

These reports form the basis of all authentic information as to charitable trusts.

In 1835 a Select Committee of the House of Commons was appointed for the purpose of examining into the reports of the above-mentioned commissions, so far as then published. The committee by its report recommended the appointment of a permanent board, or other independent authority, to which should be intrusted the duty (1) of inquiring into the administration of charitable trusts; (2) of compelling the production of the accounts of the expenditure of charities, and of auditing such accounts when produced; (3) of facilitating the administration of charities, both as to the development of property, and as to the direct execution of the trusts by supplementing the powers of trustees when defective; (4) of securing the safe custody and due investment of the property of charities; (5) of giving ready and effective expression to the doctrine of *cy-près*, as administered by Courts of Equity, by means of schemes adapting the administration of charities to altered circumstances, and (6) of controlling, facilitating, and diminishing the cost of legal proceedings.

Select Committee of 1835.

In 1849 a Royal Commission was appointed to examine into and report further upon the above-mentioned commissions.

Royal Commission of 1849.

The report of this commission was published in 1850, and the recommendations made by it were substantially the same as those made by the Select Committee of 1835.

Charitable Trusts Acts.

The report of the Royal Commission of 1849 led in 1853 to the passing of the Charitable Trusts Act of that year.

Charit. Trusts Acts.

The Charitable Trusts Act, 1853, was followed by the Charitable Trusts Amendment Act, 1855, and the Charitable Trusts Acts, 1860, 1862, and 1869.

By these Acts the permanent authority recommended by the Select Committee of 1835 has been established under the name of the Charity Commissioners for England and Wales. To this body

Establishment of Charity Commission.

(c) Fearon's *Endowed Charities*, pp. 20, 21.

all the powers above enumerated, with the single exception of that of audit, have been gradually entrusted.

Nature of powers.

The powers thus vested in the Charity Commissioners are remedial and protective. They are designed (1) to supplement the means provided by founders for giving effect to their intentions, where those means are inadequate to give full effect to the purpose of the foundations, and (2) to protect the property of charities against waste and loss, and so to preserve it for the purposes to which it was dedicated by the founders (*d*).

Inquisitorial and administrative powers.

The Acts of 1853 and 1855 conferred upon the commissioners powers merely of an inquisitorial and administrative character. Consequently, any abuses which were found in the administration of charities could only be remedied through the channel of the regular Courts. Nor could provision for the future management of a charity by means of a scheme be made, except by proceedings in Chancery, which were found to be both slow and costly. The Act of 1853 contains provisions (*e*) for obtaining parliamentary authority for schemes which involve a departure from the original trusts beyond the authority of the Court of Chancery to sanction. But the procedure provided is cumbersome, and involves direct legislation, and as the Charity Commission is not represented in Parliament, the greatest difficulty has been experienced in obtaining the assent of Parliament to a scheme. These provisions have consequently fallen into disuse.

Judicial powers.

The judicial powers of the Charity Commissioners date from the passing of the Charitable Trusts Act, 1860. That Act vests in the commissioners jurisdiction co-extensive with that formerly possessed by the Chancery judges at Chambers, and the County Courts, in regard to the appointment and removal of charity trustees, the removal of officers, the assurance, transfer, payment, and vesting of real and personal estate belonging to charities, and the establishment of schemes. The jurisdiction is, however, limited by sect. 4, which provides that it shall not be exercised in the case of charities of which the gross annual income exceeds 50*l.*, except upon the application in writing of the charity trustees, or a majority of them.

Decline in numbers of applications to Courts.

The last-mentioned Act left untouched the jurisdiction of the Courts. Its effect has, nevertheless, been that applications to the Courts in respect of matters over which jurisdiction is given to the Charity Commissioners, have almost entirely ceased. In the years 1854 to 1860, inclusive, 549 applications for the appointment of

(*d*) See the 29th Report of the Charity Commissioners, p. 20.

(*e*) Sects. 54—60.

trustees, or the establishment of schemes authorized by the Charity Commissioners, were made to the Court of Chancery, and 730 to County Courts. In the ten years following ninety such applications were made to the Court of Chancery, and eight to the County Courts, while 3,056 orders appointing trustees, or establishing schemes, were, during the same period, made by the Charity Commissioners. Except one in 1874, no application of this kind has, since 1869, been made to a County Court; and with the exception of one in 1881, and one in 1886, none have, since 1876, been made to the Chancery Division; while the orders made by the Charity Commissioners have, in every year, exceeded those made in any of the years between 1854 and 1860 by the Court of Chancery and the County Courts together. It is claimed by the Charity Commissioners that relief in these cases can usually be given by them "through an easy and simple course of procedure, free from technicalities, and almost wholly free also of cost" (*f*).

One very important piece of machinery provided by the Charitable Trusts Acts for securing the custody and investment of the property of charities is the constitution of official trustees, with perpetual succession, in whom real and personal estate may be vested by the commissioners without conveyance.

Official trustees.

According to the Thirty-sixth Report of the Charity Commissioners the amount of stock, &c., vested in the Official Trustees of Charitable Funds at the end of the year 1888 was 13,851,064*l.* 3*s.* 11*d.* standing to 15,277 separate accounts.

Roman Catholic charities were temporarily exempted from the operation of the earlier Charitable Trusts Acts (*g*). The period of exemption expired on the 1st September, 1859. After that date Roman Catholic charities became subject to the Acts.

Roman Catholic charities.

In the year 1860 a short Act, the Roman Catholic Charities Act, 1860, was passed, which provides that Roman Catholic charities, for lawful purposes, are not to be invalidated by the addition of superstitious trusts, and empowers the Court or the Charity Commissioners to apportion charitable gifts, the trusts of which are partly lawful and partly superstitious, and to apply the part apportioned to the superstitious uses to lawful charitable trusts.

Roman Catholic Charities Act, 1860.

In 1858 an Act (*h*) was passed for the purpose, as stated by the

Substitution of bishop of

(*f*) See the Annual Reports of the Charity Commissioners. The charity cases which now come before the Chancery Division are mainly cases in which proceedings are taken by the Att.-Gen. *ex officio*, or in which charity property is dealt with incidentally in the course of proceedings for the administration of

estates, or of proceedings commenced for other purposes than the administration of the charity.

(*g*) See note (*c*) to sect. 62 of the Charitable Trusts Act, 1853, *post*, p. 524. The other exemptions from the Acts will be found in the same section.

(*h*) 21 & 22 Vict. c. 71.

one diocese
for another in
respect of
certain
charitable
trusts.

preamble, of making such provision for the case of a bishop being trustee of charity property within his diocese, as was rendered necessary by alterations in the limits of the diocese. The Act empowers the Charity Commissioners, upon the application of the bishops concerned, or one of them, to make orders substituting the bishop of one diocese for the bishop of another for the purpose of such charity, and vesting the charity property accordingly.

Charit.
Trustees
Incorp. Act,
1872.

By the Charitable Trustees Incorporation Act, 1872, the Charity Commissioners are empowered to grant a certificate of incorporation to the trustees of any charity for religious, educational, literary, scientific, or public charitable purposes.

This Act has been rarely used, substantially the same effect being produced by vesting the charity property in the official trustees (*i*).

Bills for
amending
Charit. Trusts
Acts.

The Charitable Trusts Acts have, in various particulars, been thought to require amendment and extension; and bills have, from time to time, been introduced into Parliament (*j*) for the purpose of effecting these objects. None of these bills have become law, and a minute consideration of them is unnecessary. The points in which the Charitable Trusts Acts have been considered to be defective, will sufficiently appear from a statement of the chief provisions of the Bill of 1881.

Clause 2 of that bill aimed at removing, to some extent, the restriction placed on the jurisdiction of the Board by sect. 4 of the Charitable Trusts Act, 1860, by enabling those powers to be exercised in any case, except for the establishment of schemes, upon the application of the Attorney-General, or any five inhabitants of the parish or place where the charity was administered or applicable; but the power of vesting in the official trustee real estate of charities of which the trustees or governors were incorporated, was not to be extended.

Clause 3 was designed to enable schemes which involved such a variation of the trusts declared by the founders as was beyond the authority of the Court to sanction, to be established by a less cumbrous procedure than that provided by sects. 54—60 of the Charitable Trusts Act, 1853. It was proposed to substitute for the last-mentioned procedure that provided by the Endowed Schools Acts in the case of schemes relating to endowed schools (*k*).

Clause 4 of the bill was intended to enable the Charity Commissioners to establish schemes with regard to charities governed by

(*i*) See the 21st Report of the Charity Commissioners. From a Parliamentary return made in 1881 it appears that up to that date only nine certificates had been granted under this Act.

(*j*) Bills were introduced in 1871, 1878, 1881, and 1883.

(*k*) See End. Schools Act, 1869, ss. 31—44.

Act of Parliament, the Commissioners having always held that they, like the Court (*l*), had no power to vary the express provisions of a statute. The clause was as follows:—

“Any provisions relating to a charity contained in any Act of Parliament establishing a scheme approved and certified by the Board under sect. 54 and the following sections of the Charitable Trusts Act, 1853, or in any Act of Parliament other than a public general Act, may be from time to time amended or altered by a scheme of the High Court of Justice, or of the Board in the exercise of its ordinary jurisdiction, as effectually as if the trust created by, and the provisions contained in, such Act had been established by the founder in the case of a charity having a founder.”

Clauses 5, 6 and 7 contained special provisions (1) for the regulation by schemes of charities for doles and kindred objects; (2) for the transfer of charity funds from the custody of Courts of Equity. Clauses 8, 9 and 10 were designed to render the procedure of Courts of Equity more readily and cheaply accessible for the benefit of charities in cases to which the powers of the Board are inapplicable. Clause 13 was intended to facilitate the appointment of trustees; and clause 14 to set at rest the difficult question as to the meaning of “endowment” in sects. 62 and 66 of the Charitable Trusts Act, 1853. Another matter intended to be provided for was the effectual audit of the accounts of charities (*m*).

In 1884 a Select Committee was appointed by the House of Commons to inquire into the operation of the Charitable Trusts Acts, 1853 to 1869 (*n*); and to consider and report how far it might be expedient to amend the powers exercised under them by the Charity Commissioners. The committee published their report on the 29th of July, 1884.

Select Committee of 1884 on Charit. Trusts Acts.

In this report the committee expressed an opinion that the powers and duties conferred upon the Charity Commissioners might be safely extended, and that there was no ground for maintaining the limit in the Charitable Trusts Act, 1860, in respect of charities with an income of over 50*l*. per annum, but that a further step should be taken for transferring to the Commissioners the powers exercised by the High Court of Justice for the control and reform of mischievous or wasted charities. They considered that the right of appeal to the High Court, guarded by the sanction of

Report.

(*l*) See *ante*, pp. 89 *et seq.*

(*m*) This has always been regarded by the Charity Commissioners as a matter of great importance, the powers of requiring charity trustees to account being obviously incomplete without it.

(*n*) This committee took the Charit.

Trusts Bill, 1883, which was nearly identical with that of 1881, as the basis of their inquiry, and received evidence upon its main clauses *seriatim*. The committee were also directed to inquire into and report upon the Allotments Extension Act, 1882; see *post*, p. 460.

the Attorney-General, should be maintained; and that where, in the opinion of the Commissioners, a greater change in the disposition of charity funds than was sanctioned by the doctrines of the Court was expedient, the scheme should be laid before Parliament in the same manner as in the case of schemes under the Endowed Schools Acts, and they recommended that a Standing Committee should be appointed each session to consider such schemes. They considered, however, that charities or endowments devoted to religious objects, and those not less than one-half of the income of which is derived from voluntary contributions, should be exempted from such extended powers; and that in every case more direct recognition should be given to the wishes of localities.

They also attached importance to the concentration of charities within a certain area under one management, and considered that municipal and representative county authorities were the parties best fitted to initiate schemes under which the endowed charities of a district might be grouped together, or by concerted arrangement made more generally serviceable, leaving it, however, to the Charity Commissioners to see that the schemes were properly framed and to exercise a general control over them. The Committee were further of opinion that where a charity open to all classes existed within the limits of a municipal corporation, the same notice should be given to the corporation of any scheme affecting such charity as to the trustees, and that full public inquiry should be held before any scheme was finally assented to.

Charit. Trusts
Act, 1887.

The series of Charitable Trusts Acts is completed by the Charitable Trusts Act, 1887. This Act affects the powers and duties of the Charity Commissioners not only under the Charitable Trusts Acts, but also under the other Acts now to be mentioned. It is, consequently, more convenient to refer to it hereafter (o).

Position of
Charity Com-
missioners in
relation to
charity
trustees.

It may be useful to add, in the language of the Charity Commissioners, a statement of the view which they take of the position occupied by themselves in relation to charity trustees (p):—

“The exercise, whether by the Court or the Commissioners, of (their) jurisdiction (as regards charities) has been from time to time resented by trustees of charities as antagonistic to their interests, and as restrictive of the powers entrusted to them.

“This view of the relations between the state and the trustees seems to be due to a failure to recognize either the purely remedial and protective character of this jurisdiction or the true position of the trustees, who have been concisely described, on the high

(o) *Post*, p. 465.

(p) 29th Report of the Charity Commissioners, App. p. 21.

authority of Lord Lyndhurst (*q*), as ‘public officers invested with public powers and public duties.’

“The central regulating authority, whatever it be, is specially charged, as the protector of charities, with the maintenance of that permanent character which is their distinctive feature. It is only where trustees, being more immediately and fitly concerned with the present administration of a charity, may be disposed to overlook its more remote and permanent interests, or where they deviate from the terms of their trust, that any real antagonism exists between the two authorities.

“The central authority, in the discharge of the duty which is unquestionably imposed upon it, must decide how far the interests which it has to guard are served by the course of administration pursued by the trustees, and in so doing can recognize no interests other than, or at variance with, those of the foundation itself.

“The principle thus stated underlies all the relations between the Charity Commissioners and trustees of charities, and it is that which governs the distinction which may be drawn between the functions of the two bodies.

“The trustees are the sole and responsible administrators of the income of the charity within the limits prescribed by the founder. They have no power, however, to deal with capital, nor, as has recently been laid down with much emphasis by the Court of Appeal in the case of the Campden Charities at Kensington (*r*), to vary in the slightest degree the prescribed mode of application of income.

“The Charity Commissioners, on the other hand, are in no sense administrators of income. The constitution and maintenance of an efficient body of administering trustees is as necessary to the discharge of their functions as it is to the due execution of the founder’s intentions. But they are constituted the judges of all dealings with capital, as well as of all variations of the prescribed mode of giving effect to the objects of the charity.”

Endowed Schools Acts.

The next series of Acts which calls for notice are the Endowed Schools Acts, 1869, 1873, and 1874. End. Schools Acts.

The first of these Acts was passed in pursuance of the recommendations of a Royal Commission known as the Schools Inquiry Commission, which published their report on the 2nd of December, 1867. Schools Inquiry Commission.

(*q*) Hansard Parl. Deb. Vol. LXXXV. p. 155.

(*r*) *Re Campden Charities*, 18 Ch. D. 310.

Report.

By this report the Commissioners urged a systemization of the intermediate education of each county and each of the larger towns so as best to economise the endowments available, with the object of putting higher education within the reach of the poorer classes, and bringing elementary schools into a direct chain of communication with the universities and provincial colleges. Gratuitous instruction they considered should be given only as the reward of merit ascertained by competition, and they recommended exhibitions calculated to carry poor children of ability to any point of education. They considered that, although the main designs of founders ought to be observed, regulations which had proved mischievous ought to be revised; that power ought to be given to convert to educational purposes certain endowments of a non-educational character; that girls should, where possible, participate in the endowments; and that schools should be subjected to annual examination and periodical government inspection.

End. Schools Act, 1868.

For the purpose of paving the way for the contemplated legislation a preliminary Act, the Endowed Schools Act, 1868 (*r*), was passed with the object of preventing impediments to the free action of the legislature from being created by the acquisition of vested interests. The Act provides (*s*) that "every person appointed after the passing of this Act to any office or emolument in, or in the gift of, the governing body of any of the said schools, shall take and hold such office or emolument subject to such provisions and regulations as may hereafter be enacted respecting the same." "Governing body" is defined (*t*) to include patrons, trustees, governors, or other persons in whom is vested the right of appointing masters in, and of holding and managing the property of, the said schools, or either of such rights; and "office or emolument" is defined (*u*) to include any mastership, and any office to which the duty of teaching grammar is attached, and any employment in or about the estates or property of the governing body, and any pension or compensation allowance. The Act does not affect (*v*) the tenure of any scholarship, exhibition, or other like emolument, or any pension or compensation allowance to which any person is entitled by reason of a certain number of years service, and the amount of which is not in the discretion of the governing body.

End. Schools Act,

By the Endowed Schools (Vested Interests) Act Continuance Act, 1875 (*x*), the Endowed Schools Act, 1868, is continued so

(*r*) 31 & 32 Vict. c. 32.
 (*s*) Sect. 2.
 (*t*) Sect. 3.

(*u*) Sect. 4.
 (*v*) Sect. 5.
 (*x*) 38 & 39 Vict. c. 29.

long as the power of making schemes under the Endowed Schools Acts, 1869, 1873, and 1874, remains in force.

The Endowed Schools Acts, 1869, 1873, and 1874, provide special machinery for inquiring into and regulating by means of schemes all kinds of educational endowments with certain exceptions, the chief being public schools within the Public Schools Act, 1868, and elementary schools in receipt of an annual parliamentary grant, or having not more than 100*l.* a year from endowment. Provision is also made for the application to educational purposes of dole charities, charities for the redemption of prisoners and captives, the relief of poor prisoners for debt, and other charities of a non-educational character. Schemes under the Acts require the approval of the Committee of Council on Education, and ultimately of her Majesty in Council, to whom certain rights of appeal are given.

End. Schools
Acts, 1869—
1874.

The powers of these Acts were originally vested in Commissioners known as the Endowed Schools Commissioners. But by the Endowed Schools Act, 1874, the Endowed Schools Commissioners were abolished, and their powers and duties transferred to the Charity Commissioners, the number of the Charity Commissioners and their staff being at the same time increased in order to meet the additional work thrown upon them.

The powers conferred by the Endowed Schools Acts, 1869, 1873, and 1874, as also the appointment of the additional Charity Commissioners, are temporary. The date fixed by the Endowed Schools Act, 1874, for the expiration of them was the 31st December, 1879. By the Endowed Schools Acts Continuance Act, 1879 (*y*), they were extended to the 31st December, 1882, and they have since been annually continued (*z*).

Duration of
powers.

The way in which the Charity Commissioners have worked out the Endowed Schools Acts, keeping in view the principle of providing a "ladder of education," by which persons in the humblest rank of life are enabled to reach any pitch of education, is exceedingly interesting, but scarcely falls within the scope of the present work. Full information with regard to it can be obtained from the annual reports of the Charity Commissioners, and from the report of the proceedings before the Select Committee of 1886 and 1887, referred to below.

Mode of
working
End. Schools
Acts.

The Select Committee of 1884 on the Charitable Trusts Acts (*a*) stated in their report that such dissatisfaction as existed with the action of the Charity Commissioners seemed to have arisen mainly in carrying out the policy of the Endowed Schools Acts, and

Select Com-
mittee of
1884.

(*y*) 42 & 43 Vict. c. 66.

and note (*c*) thereto, *post*, p. 655.

(*z*) See End. Schools Act, 1874, s. 6,

(*a*) *Ante*, p. 453.

especially in respect of the Commissioners declining to appropriate funds to the direct support of elementary schools, and to maintain or institute any system of indiscriminate gratuitous education.

Select Committee of 1886 and 1887.

A Select Committee was accordingly appointed in 1886, and re-appointed in 1887, to inquire into the operation of the Endowed Schools Acts, and how far it might be expedient to amend the powers exercised under them by the Charity Commissioners. The committee published their report on the 21st of April, 1887.

Report.

By this report it was found that the policy of the Endowed Schools Acts, following, as it did, the recommendations of the Schools Inquiry Commission (*b*), was in principle sound and just, although some modification was rendered necessary by increased experience and altered circumstances.

With regard to the Acts themselves, the committee recommended that the concurrence of some local representative body in the application of non-educational endowments to educational purposes, under sect. 30 of the Endowed Schools Act, 1869, should be substituted for the consent of the trustees required by that section. They considered, also, that the provisions of the Acts (*c*) requiring "due regard" to be had to the educational interests of persons or classes prejudicially affected by a scheme might appear to have been narrowed by the decisions of the Privy Council, and possibly to require strengthening. The committee further recommended that in framing schemes the need for technical and higher commercial education should be carefully kept in view (*d*), and they suggested that, where the endowment was too small, assistance might be given out of local rates.

The examination, inspection, and supervision of endowed schools was regarded by the committee as of urgent importance. And the appointment of additional assistant commissioners to act as inspectors of schemes for these purposes, was recommended (*e*).

The committee also recommended that, for the purposes of examination and inspection and otherwise, and also for the purpose of clearly defining and rendering complete the responsibility of the Charity Commission to Parliament, a Minister of Education should be appointed, who should be charged with a general supervision of

(*b*) *Ante*, p. 455.

(*c*) End. Schools Act, 1869, s. 11, and End. Schools Act, 1873, s. 5, *post*. See note (*d*) to the first-mentioned section, *post*, p. 605.

(*d*) The issue in the year 1884 of the Report of the Royal Commissioners on Technical Instruction had previously led the Charity Commissioners to introduce into schemes framed under the End. Schools Acts provisions for technical education. See the 32nd and 33rd

Reports of the Charity Commissioners.

(*e*) The Charity Commissioners had in their reports frequently urged the necessity of an organised system of inspection of endowed schools, more especially as there was reason to believe that the provisions of schemes were not infrequently disregarded or imperfectly carried out: see the 25th, 27th, 28th, 29th, and 31st Reports of the Charity Commissioners.

endowed schools, as recommended by the report of the "Committee on Education, Science, and Art (Administration) 1884."

The report also contained the following general recommendations:—That a large share in the management of endowed schools should be given to the people by representation, either direct or indirect, through elected bodies; that greater publicity should be given to the proceedings of the Charity Commissioners in regard to schemes; that schemes should be less detailed in their character; that the principle of the Allotments Act, 1882, should be applied to agricultural land belonging to an educational charity, provided no detriment resulted therefrom to the income of the charity; that the right of appealing against a scheme to the Queen in Council (*f*) should be extended to representative provincial or municipal bodies; and that opposed schemes laid before Parliament on petition should be referred to a select committee appointed each session to consider and report on them.

It had been alleged that schemes under the Acts tended to divert endowments from the use of the poor to the benefit of the middle classes, but the Select Committee held that this allegation was not sustained.

Since the publication of the last-mentioned report, the Charity Commissioners, although no increase has been made to their staff, have undertaken the work of inspecting and inquiring into the completeness with which schemes under the Endowed Schools Acts are being carried out, into the condition and organization of endowments and their work, and into the success with which the operation of the schemes has been attended. Supervision
of schemes.

Although it is true that the powers of the Charity Commissioners under the Endowed Schools Acts do not extend, and their powers under the Charitable Trusts Acts are not specially adapted, to the supervision of schemes, yet the exercise of such supervision is an almost necessary incident to the quasi visitatorial jurisdiction which the Charity Commissioners possess under these schemes (*g*).

Prison Charities Act, 1882.

By the Prison Charities Act, 1882, power is given to the Charity Commissioners, on the application of the Secretary of State, to make schemes regulating prison charities (*h*). Prison
Charities Act,
1882.

It was not until April, 1886, that the application of the

(*f*) End. Schools Act, 1869, s. 39, *post*, p. 628.

(*g*) See the 36th Report of the Charity Commissioners, pp. 25—27; and see

ante, p. 76.

(*h*) It will be seen hereafter (*post*, p. 671) that this Act created no new jurisdiction.

Secretary of State necessary to enable the Charity Commissioners to take proceedings for dealing generally with prison charities was made. The work of making schemes under the Act is now being proceeded with.

Allotments Extension Act, 1882.

Allotments
Extension
Act, 1882.

The main object of the Allotments Extension Act, 1882, was to provide for the letting in allotments of land held in trust for dole charities. It extends to all the irremovable poor and to all lands, cultivated or not, held for the benefit of the poor as in the Act mentioned. The Act gives a mandatory direction to all trustees of lands vested for the benefit of the poor (including a committee under the Poor Allotments Management Act, 1873) to take steps for letting the land in allotments (i). The trustees are given no discretion as to individual allottees, but every cottager and labouring man has a right conferred upon him to claim an allotment.

By sect. 9 the trustees are empowered to make rules with regard to allotments, which must receive the sanction of the Charity Commissioners. And under sect. 11 the Charity Commissioners may, where the land is unsuitable for allotments on the ground of distance or otherwise, grant a certificate of exemption from the necessity of letting it in allotments.

Select Com-
mittee of
1884.

The Select Committee of 1884 on the Charitable Trusts Acts, already referred to (k), was also directed to inquire into the working of the Allotments Extension Act, 1882. The report of the committee on this Act was published on the 4th of December, 1884.

Report.

By this report, the committee stated that there was nothing in the Act to relieve the trustees or the Charity Commissioners from the duty of having primary regard in working the Act to the benefit of the charity rather than that of the allottees.

The report dealt with a number of cases in which difficulty had arisen in the construction and working of the Act (l).

It appears from the report that, in many instances, trustees of charities have preferred to resign rather than carry out the duties imposed upon them by the Act, and that in such cases it is often difficult, if not impossible, to find others to supply their places. This shows the great difficulty of applying anything like coercion to the trustees. The committee found that in some cases the provisions of the Act had been evaded by the trustees by means of the

(i) Sects. 5 and 13.

k) *Ante*, p. 453.

(l) These are referred to in the notes to the various sections of the Act.

device of letting the land on lease, and that in such a case the Charity Commissioners were powerless to interfere.

A suggestion was made that, inasmuch as the trustees of local charities for the distribution of doles are not generally so constituted as to deal effectively with allotments, action might be taken under the Poor Allotments Management Act, 1873, to appoint committees of management of the allotments, who should hire the land from the charity trustees, and that such committees should, by an amending Act, be entrusted with the powers conferred by the Allotments Act of 1882.

The result of the report is to show that there are difficulties in the Act which render further legislation desirable. The Charity Commissioners say (*m*): "In many cases, no doubt, the Act has passed quietly into operation. This result has been generally produced where the trustees have been willing to give effect to it. In other cases, where good feeling and forbearance have prevailed between the trustees and the applicants for allotments, the powers reposed in us have for the most part been sufficient in time to bring about a satisfactory result. But if it be sought that, everywhere and at once, the lands of dole charities should be let in allotments, it is necessary in our opinion, which was expressed in the course of the evidence given before the committee, that the Act itself should be largely amended, and that its local administration should be entrusted to bodies specially constituted for the purpose."

No further legislation in this direction has as yet been effected.

City of London Parochial Charities Act, 1883.

As early as 1864, the Charity Commissioners (*n*) called attention to the disproportion of charitable endowments in the City of London to the purposes of the foundations, and in 1865, in compliance with an order of the House of Lords, they compiled and published a General Digest of Endowed Charities in the City of London (*o*). Subsequently, on more than one occasion (*p*), they expressed an opinion that a proper re-arrangement and re-appropriation of those charities could only be accomplished by some special extension of existing jurisdiction under the authority of Parliament.

Recommendations of Charity Commissioners.

On the 10th of August, 1878, a Royal Commission was issued to inquire into the circumstances of those charities with a view to future legislation. The commission made its report on the 12th of March, 1880, and thereby recommended the appointment of a temporary

Royal Commission of 1878.

(*m*) See the 32nd Report of the Charity Commissioners, pp. 11, 12.

(*n*) 11th Report, p. 5.

(*o*) Parl. Paper, H. L. Sess. 1865, No. 243.

(*p*) See the 13th and 24th Reports.

commission, with power to examine into the trusts, charters, deeds, and documents relating to the origin and administration of the City charities, the leases granted by the trustees and the employment of the revenue, and the accounts for the seven previous years. It was also recommended that the special commission should classify the City charities into ecclesiastical and eleemosynary; that the surplus proceeds of ecclesiastical charities should be handed over to the Ecclesiastical Commissioners, and that, with regard to eleemosynary charities, such part of the funds as the commission should determine should remain in the hands of the trustees of the foundations, and that the residue should be handed to a special board, who should make schemes for the application of the funds so entrusted to them; and that, after the expiration of the temporary commission, its powers should pass to the Charity Commissioners.

Two bills were introduced into the House of Commons in 1882 for the purpose of giving effect to these recommendations, both of which failed to become law.

City of
London
Parochial
Charities Act,
1883.

In 1883 the City of London Parochial Charities Act was passed. To a large extent the above-mentioned recommendations were adopted by it, but the temporary powers, which it was suggested should be entrusted to a special commission, were given to the Charity Commissioners. The powers conferred by the Act are temporary.

Under this Act a two-fold duty is cast upon the Charity Commissioners; first, the duty of inquiring into the property and trusts of all the charities comprised in the General Digest above mentioned, and of all other charities applicable for the benefit of any parish, or part of a parish, within the City of London (*q*); and, secondly, the duty of preparing and submitting for the approval of the Committee of Council on Education, and ultimately of her Majesty, schemes providing for the future application of the income of those charities primarily for the benefit of the parishes to which they belong, and secondarily for the benefit of the metropolis generally.

The Act provides for the classification by the Charity Commissioners of the property of the parochial charities under two schedules; the first schedule comprising "ecclesiastical charity property," and the second "general charity property" (*r*); and for the publication from time to time of a statement of the results of the inquiries (*s*).

(*q*) Sect. 5.
(*r*) *Ibid.*

(*s*) Sect. 8.

Schemes framed under the Act are directed to provide for the vesting of the charity property in the official trustee of charity lands, and the official trustees of charitable funds respectively (*†*).

In the case of charities belonging to the parishes mentioned in the first schedule to the Act, the scheme must provide for the application of property scheduled as ecclesiastical to the maintenance of the fabric and services of the church, and other ecclesiastical purposes, and for the application of property scheduled as general to such of the purposes to which the same has been previously applied as the Commissioners consider beneficial; and subject thereto for education, the establishment of libraries, and the maintenance of open spaces, recreation grounds, provident institutions, and so forth, in the parish, or any parish formerly united with it (*u*).

In the case of charities belonging to the parishes specified in the second schedule to the Act, every scheme must provide for the application of property scheduled as ecclesiastical to the maintenance of the fabric and services of the church of the parish, or of any other church in the City of London, and for the payment of the surplus income to the Ecclesiastical Commissioners to be applied in the maintenance of the fabric of churches, the better endowment of benefices and so forth, in the more populous districts of the metropolis. And with regard to property scheduled as general, the scheme must provide for the management thereof by a new governing body, to be called "the Trustees of the London Parochial Charities" (*w*), except in cases where the Commissioners provide for its management by an existing body of trustees. The Trustees of the London Parochial Charities or the existing body of trustees (as the case may be) are to be directed by the scheme to apply the property to such of the previous objects of the charity as the Commissioners may consider beneficial; and, subject thereto, towards the promotion of education, the maintenance of libraries, open spaces, recreation grounds, provident institutions, convalescent hospitals in or for the benefit of the poorer classes of the metropolis (*x*).

The provisions of the Act with regard to the procedure for approving schemes, and the effect of them when approved, are substantially the same as those provided by the Endowed Schools Acts with regard to schemes under those Acts.

During the continuance of the power of making schemes under

(*†*) Sect. 12, *post*, and notes thereto.

(*u*) Sect. 13.

(*w*) The establishment and constitu-

tion of this body is provided for by sects. 48 and 49, *post*.

(*x*) Sect. 14.

the Act, no Court can make a scheme or appoint new trustees without the consent of the Commissioners (z).

Two additional Commissioners were appointed under the Act for the purpose of carrying out the additional labour imposed by it upon the Commission.

Mode of working Act.

It is not within the scope of this Book to enter into the details of the manner in which this Act is being carried into effect. Particulars of the work so far as it has at present proceeded can be obtained from the thirty-fifth and thirty-sixth reports of the Charity Commissioners. It is apparent from them that the importance and value of the proceedings of the Commissioners under it can hardly be over-estimated. It is sufficient to state here that the statements required by the Act have all been published, with the exception of a supplemental statement, which will shortly be made public, and that the preparation of schemes is being actively proceeded with.

Municipal Corporations Act, 1883.

Municipal Corporations Act, 1883.

The Municipal Corporations Act, 1883, was passed, as is stated in the preamble, in consequence of the report made by the Royal Commission appointed in 1876 to inquire into municipal corporations not subject to the Municipal Corporation Acts consolidated and repealed by the Municipal Corporations Act, 1882 (a). The places to which the Act relates are specified in the schedules, and all of them are places not included in the Municipal Corporations Act, 1882.

Schedule I., Part I., comprises places to which the Commissioners of 1876 considered that the Municipal Corporations Acts might be applied.

Part II. of the same schedule comprises places not mentioned by the Commissioners of 1876 as places to which the Municipal Corporations Acts might be applied.

Part I. of the second schedule comprises places mentioned in the Report of the Commissioners as places which either have never been municipal or have long ceased to be so. And Part II. of the same schedule comprises places mentioned in the same report as having had municipal corporations in 1835.

As regards all such places (with certain exceptions) all special judicial bodies, exclusive rights of trading, and other local franchises, privileges, and exemptions existing under any charter, grant, or prescription were abolished from the 25th March, 1886,

(z) Sect. 40.

(a) 45 & 46 Vict. c. 50.

or, in some cases, from a subsequent day not later than the 29th September, 1886 (*b*). And as from such day each of them (except those to which a new charter was granted (*c*)) ceased to be a corporate town or borough, and the municipal or other corporation thereof was dissolved (*d*).

The property of the dissolved corporations is made applicable for the public benefit of the inhabitants in such manner as may be provided by a scheme of the Charity Commissioners, or, in a case where a scheme is made by the Local Government Board, by that scheme (*e*).

Acts and charters inconsistent with the Act are repealed (*f*).

The powers conferred upon the Charity Commissioners by the Act of making schemes for the application of the property of the dissolved corporations took effect from the 25th March, 1886.

Charitable Trusts Act, 1887.

The only other Act relating to the Charity Commission which requires to be mentioned is the Charitable Trusts Act, 1887. The object of this Act was to effect changes in the constitution of the office of the Charity Commission, which were rendered necessary by the great increase in the work imposed upon it. The Act puts an end to the power of appointing inspectors, and substitutes for the future assistant commissioners. The powers of the assistant commissioners are made available not only for the purposes of the Charitable Trusts Acts, but for any purpose incidental to duties imposed by any existing or future Act; they can consequently be used for the purposes of Acts such as the Allotments Extension Act, 1882, and the Municipal Corporations Act, 1883. The Act also provides for a change in the constitution of, and for the re-organisation of the department of, the Official Trustees of Charitable Funds; the administrative changes necessary being left to be prescribed by Treasury Regulations. These provisions came into operation on, and the corresponding repeal of certain parts of the earlier Charitable Trusts Acts took effect from the 1st of April, 1889, the date fixed by the Treasury Regulations (*g*).

(*b*) Sect. 2.

(*c*) An asterisk is prefixed to the places mentioned in the schedules to the Act to which a charter has since been granted: see *post*.

(*d*) Sect. 3.

(*e*) *Ibid*.

(*f*) Sect. 26.

(*g*) It will be seen hereafter that these regulations over-ride certain provisions of the Charit. Trusts Acts.

THE CHARITABLE TRUSTS ACT, 1853.

16 & 17 VICT. c. 137.

An Act for the better Administration of Charitable Trusts (a).
[20th August, 1853.]

WHEREAS it is expedient to provide means for securing the due administration of charitable trusts (*b*), and for the more beneficial application of charitable funds in certain cases: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Appointment,
&c. of
Charity Com-
missioners,
secretary, and
inspectors (*d*).

1. It shall be lawful for her Majesty and her successors, by warrant under the royal sign manual, to appoint four Commissioners (*c*), and also one secretary and two inspectors (*d*) for the purposes of this Act, and upon any vacancy by the death, resignation, or removal of any Commissioner, secretary or inspector (*d*) under this Act, from time to time in like manner to appoint another person to succeed to such vacancy, and until a fresh appointment shall be made it shall be lawful for the surviving or continuing Commissioners, in case of any vacancy, to act as if no such vacancy had occurred ; and three of the said Commissioners shall hold office during good behaviour ; and the fourth, and every secretary and inspector (*d*) to be appointed under this Act, shall hold office during the pleasure of her Majesty.

Short titles.

(*a*) This Act and the Charit. Trusts Acts, 1855, 1860, 1862, 1869 and 1887, are construed as one Act (Charit. Trusts Amend. Act, 1855, s. 1 ; Charit.

Trusts Act, 1860, s. 1; Charit. Trusts Act, 1869, s. 3; Charit. Trusts Act, 1887, s. 1), and may be cited together as the Charit. Trusts Acts, 1853 to 1887: Charit. Trusts Act, 1887, s. 1, *post*. This Act and the Acts of 1855, 1860, 1862 and 1869, may also be cited together as the Charit. Trusts Acts, 1853 to 1869: Charit. Trusts Act, 1869, s. 3, *post*. Sect. 1
(a)—(d).

Any provisions of this Act inconsistent with the Charit. Trusts Amend. Act, 1855, are repealed by sect. 1 of that Act, and any provisions of this Act and of the Act of 1855 inconsistent with the Charit. Trusts Act, 1860, are similarly repealed by sect. 1 of the last-mentioned Act. Repeal.

With regard to the scope and object of the Charit. Trusts Acts, Lord Hatherley, in *Braund v. Earl of Devon*, L. R. 3 Ch. at p. 804, said: "The object, no doubt, of the provision in the Statute (sect. 17 of this Act, *post*, p. 476) was, as is stated in *Re Lister's Hospital* (6 De G. M. & G. at p. 186), to put an end to certain very scandalous proceedings on the part of individuals who, ascertaining that there was a fund disposable for the purpose of charities which had been overlooked, and thinking that a considerable profit might be made in the way of costs, instituted proceedings which were not likely to produce good to any one." See also *Re Jarvis' Charity*, 1 Dr. & Sm. at p. 100; *Holme v. Guy*, 5 Ch. D. at p. 903. Scope and
object.

The Charit. Trusts Acts "having been passed for the public good, it is the duty of Courts of Justice to put such a construction upon them as may tend to the furtherance rather than to the restriction of" the powers conferred by them upon the Charity Commissioners: *Re Duncan*, L. R. 2 Ch. at p. 359. Cf. also *Re Meyricke Fund*, L. R. 7 Ch. at pp. 505, 506. Principle of
construction.

For the application of the Act see the definitions of "Charity" in sect. 66 of this Act, and sect. 48 of the Charit. Trusts Amend. Act, 1855, and n. (c) to the first-mentioned section, *post*, p. 532. See also the exemptions contained in sect. 62 of this Act, *post*, pp. 522 *et seq*. Application.

A charity founded and endowed in England or Wales, but of which the revenues are applied abroad, is within the Acts: *Re Duncan*, L. R. 2 Ch. 356. And it seems that charities of which the proceeds are applicable in England or Wales, but of which the endowments are abroad, are also within the Acts: *ibid*. See also *Ironmongers' Co. v. Att.-Gen.*, 10 Cl. & F. 908; *Att.-Gen. v. Gibson*, 2 Beav. 317, n.

(b) As to what constitutes a charitable trust, see Chap. I., *ante*.

(c) Additions to the staff have been provided for by the End. Schools Acts (End. Schools Act, 1874, s. 2, *post*), and by the City of London Parochial Charities Act, 1883 (see sect. 3, *post*). Additions to
staff.

(d) So much of this section as relates to inspectors is repealed: Charit. Trusts Act, 1887, s. 6. And the power of appointing inspectors is put an end to: *ibid*. s. 2, sub-s. (4), *post*. By that Act assistant commissioners are substituted for inspectors. Inspectors.

Sect. 3 of the Charit. Trusts Amend. Act, 1855, gave power to appoint additional inspectors, but the section is now repealed: Charit. Trusts Act, 1887, s. 6, *post*.

2. The said three Commissioners so holding office during good behaviour shall be paid as hereinafter mentioned (a), and two at least of the said paid Commissioners for the time being shall be barristers-at-law Qualification
of Commis-
sioners.

Sect. 2. of not less than twelve years standing at the time of their respective appointments, and one of such barristers shall be the Chief Commissioner, and shall be so called and distinguished in his appointment.

Chief Commissioners.

(a) Sect. 4 of this Act, now repealed : see note (a) thereto.

Appointment of clerks and messengers.

3. The said Commissioners, with the sanction of the Commissioners of her Majesty's Treasury, shall from time to time appoint such clerks and messengers as the said Commissioners may think fit, and all persons appointed under this provision shall hold their offices during the pleasure of the said Commissioners.

Salaries.

4. *There shall be paid to the said paid Commissioners, and to the said secretary, inspectors, clerks, and messengers, such salaries not exceeding for the Chief Commissioner the annual sum of one thousand five hundred pounds, and for each of the other paid Commissioners the annual sum of one thousand two hundred pounds, and for the said secretary the annual sum of six hundred pounds, and for each of the said inspectors the annual sum of eight hundred pounds, as shall be from time to time allowed by the Commissioners of her Majesty's Treasury, who may also allow to every Commissioner, inspector, and other person appointed for the purposes of this Act such reasonable travelling and other expenses as may be incurred by him in the execution of his office, and the said salaries and expenses, and the incidental expenses of the said Board, shall be paid out of any moneys which may be from time to time provided by Parliament for that purpose: Provided always, that after the thirty-first day of March in the year one thousand eight hundred and fifty-seven, the said annual salary shall be paid to one only of the said Commissioners besides the said Chief Commissioner (a).*

Repeal.
Salaries.

(a) This section is repealed by the Charit. Trusts Act, 1887, s. 6, *post*.

Sect. 3 of the End. Schools Act, 1874, *post*, provides that there shall be paid to the commissioners and their officers such salaries as the Treasury may from time to time determine.

No paid Commissioner, secretary, or

5. No paid Commissioner, secretary, or inspector (a) to be appointed under this Act shall be capable of sitting

in the House of Commons during the tenure of his office. **Sect. 5.**

(a) Now "assistant commissioner:" Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*. inspector, to sit in House of Commons.

6. The said Commissioners to be appointed under this Act shall be styled "The Charity Commissioners for England and Wales," and may have and use a seal for authenticating documents, and such Commissioners shall sit from time to time as a Board for carrying this Act into execution; and any two of such Commissioners may form a Board, and may exercise all or any of the powers conferred on the Commissioners or the Board by this Act (a). Style and seal of Commissioners. Any two may form a Board.

(a) Acts of the Board are authenticated by the seal of the commissioners and the signature of their secretary (Charit. Trusts Amend. Act, 1855, s. 4, *post*), or any officer of the Board authorized to act on his behalf; Charit. Trusts Act, 1887, s. 3, *post*. Authenticat-ion.

7. The said Board shall, by general minutes, from time to time prescribe regulations for their proceedings, and the proceedings of their inspectors (b), and concerning the form and manner of applications to the said Board, and the conditions to be performed by applicants, and for the guidance of applicants in relation thereto, and all such general minutes shall be signed by three of the said Commissioners at the least; and copies of all such general minutes shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament be sitting, or if Parliament be not sitting, then within fourteen days after the next meeting thereof. Board to frame regulations by general minutes, &c. (a).

(a) It is understood to be in contemplation to issue fresh minutes under this section. The existing minutes, being out of date, are not inserted. A complete set of the forms of application to the Board now in use will, however, be found in App. II. to this Book, *post*.

(b) Now "assistant commissioners:" Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

8. The said Board shall cause minutes of their proceedings, and all orders, certificates, and schemes, made Minutes of proceedings and orders,

Sect. 8. or approved by them under this Act, to be entered in books to be provided and kept for such purpose, and all such entries shall be signed by their secretary (*a*), and all copies purporting to be extracted from the books of the said Board, and to be certified by their secretary (*a*), of any such minutes, orders, certificates, and schemes entered as aforesaid, shall be received as evidence of the proceedings to which such minutes shall relate, and of such orders, certificates, or schemes, and of the making or approval thereof (as the case may require) by the said Board, without further proof thereof (*b*).

&c. to be entered, and copies of entries signed by the secretary to be received in evidence.

(*a*) Or any officer of the Board authorized to act on behalf of the secretary : Charit. Trusts Act, 1887, s. 3, *post*.

(*b*) As to the authentication of orders, &c. of the Board, see Charit. Trusts Amend. Act, 1855, ss. 4, 5, *post*.

Board to inquire into condition and management of charities in England and Wales.

9. It shall be lawful for the said Board from time to time, as they in their discretion may see fit, to examine and inquire (*a*) into all or any charities (*b*) in England or Wales, and the nature and objects, administration, management, and results thereof, and the value, condition, management, and application of the estates, funds, property, and income belonging thereto; and the said Board may cause examinations and inquiries in relation to the matters aforesaid to be made and prosecuted by their inspectors (*c*), acting together or separately, in such cases and at such times as the said Board may think fit; and all such inspectors (*c*) shall from time to time report their proceedings to the said Board.

Extension of powers.

(*a*) The powers with regard to the prosecution of inquiries conferred by sects. 9—14 of this Act are extended by sects. 6—9 of the Charit. Trusts Amend. Act, 1855, *post*, pp. 537 *et seq*. The extended powers are exerciseable by the Board, or any commissioner or assistant commissioner. By sect. 19 of the Charit. Trusts Act, 1860 (*post*, p. 543), the Board may require documents relating to charities to be transmitted to them for examination.

Meaning of charity.

(*b*) "Charity" means every endowed foundation and institution taking effect in England or Wales, and coming within the interpretation of the Statute of Elizabeth, or as to which, or the administration of the revenues or property of which, the Court has or may exercise jurisdiction: see sect. 66 of the present Act, *post*; sect. 48 of the Charit. Trusts Amend. Act, 1855, *post*, and Chap. I., *ante*. This section, taken in connection with the above de-

inition, gives the Board power to inquire into charities where there are special visitors.

Sect. 9
(b), (c).

(c) Now "assistant commissioners": Charit. Trusts Act, 1887, s. 2, sub-s. (3).

10. The said Board may require all trustees (b) or persons acting or having any concern in the management or administration of any charity, or the estates, funds, or property thereof, to render to the said Board, or to their inspectors (c), or either of them, accounts and statements in writing in relation to such charity, or the funds, estates, property, income, or monies thereof, or the administration, management, and application thereof, and may also require such trustees and persons to return answers in writing to any questions or inquiries addressed to them by the direction of the said Board relating to the matters aforesaid.

Board may
require
accounts and
statements (a).

(a) The powers conferred by this section are extended by sect. 12 of the Charit. Trusts Amend. Act, 1855. See note (a) to the last section.

Extension of
powers.

Orders made by the Charity Commissioners under these powers require the charity trustees, or other person upon whom the order to account is made, to transmit to the commissioners within a specified time a statement in writing of all the real and personal endowments and property of or belonging to the charity, stating, in the case of realty, particulars of leases and tenancies, with the names of lessees or tenants; and in the case of personalty, particulars of the investments. A statement in writing is also required, certified under the hand of the person directed to account, of the income and revenue of the charity for certain specified years; and of the receipts and expenditure of, or on account of, income, during such years, distinguishing the dates of receipts and expenditure, and stating any balance of income due to or from the charity. And various specific inquiries relating to the charity are inserted in the order, to which answers are required to be given.

Form of
order.

Failure to obey the order is a contempt of Court: sect. 14 of this Act, *post*.

Failure to
obey orders.

An endowment of which the trustees are empowered to revoke the trust is, until that power is exercised, an endowment within the Charit. Trusts Acts. Accounts may therefore be required in respect of it: *Re Sir Robert Peel's School at Tamworth*, L. R. 3 Ch. 543. See also *Re St. Bride's, Fleet Street, Church or Parish Estate*, W. N. 1877, 95, 149, cited in note (a) to sect. 14 of this Act, *post*.

(b) "Trustee" of a charity is defined by sect. 66 of this Act, *post*.

(c) Now "assistant commissioners": Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

11. All officers having the custody of enrolments, decrees, reports, records, and other documents relating

Officers
having
custody of

Sect. 11. to or concerning any charity shall furnish such copies or extracts as shall be required by the said Board ; and every inspector (*b*), secretary, and other officer of the said Board for the time being employed for the purposes of this Act shall be at liberty, by the authority and under the directions of the Board, and subject to such regulations as the Board may make in that behalf, to examine and search the registers and records of every court of law and equity, and every ecclesiastical court, and every public registry and office of records, and to take copies of and extracts from any decree or document recorded or registered or deposited therein respectively, for any purpose contemplated by this Act, without fee or other payment in respect thereof.

documents relating to any charity shall furnish copies and extracts, if required by the Board, and may examine registers, &c. (*a*).

(*a*) See note (*a*) to sect. 9, *ante*.

(*b*) Now "assistant commissioner": Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

Inspectors may require attendance of witnesses and examine them on oath, &c. (*a*).

12. Any inspector (*b*) acting under the authority of the said Board may, by precept under his hand, subject to such regulations as the said Board may make in that behalf, require any person, being a trustee of any charity or otherwise acting or having any concern in the management or administration of any charity, or of the estates, funds, or property thereof, or in the receipt or payment of the income or monies thereof, or deriving any income or stipend therefrom, to attend before such inspector (*b*) for the purpose of being examined by him touching or relating to such charity, or the estates, funds, property, or income thereof, at any time and place mentioned or appointed by such precept, and to bring and produce any deed, paper, writing, instrument, or other document, being in the custody, possession, or power of such person, and relating to such charity, or the estates, funds, property, or income thereof, and may examine upon oath all persons attending in pursuance of such precept, and all persons voluntarily attending before him, and may administer such oath: Provided always, that no person

shall be obliged to travel in obedience to any such precept more than ten miles from his place of abode. Sect. 12.

(a) These powers are extended by sects. 7 and 8 of the Charit. Trusts Amend. Act, 1855, *post*.

(b) Now "assistant commissioner:" Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

13. If any person wilfully give false evidence upon any examination under this Act, every person so offending shall be deemed guilty of a misdemeanor. Persons giving false evidence guilty of a misdemeanor.

14. If any person from whom the said Board, or any inspector (b), is authorized to require any account or statement or answers to any questions or inquiries, or whose attendance any inspector (b) is authorized to require, shall refuse or wilfully neglect to render to the said Board such account or statement, or to make answers to such questions or inquiries, or to attend in obedience to any lawful precept of any inspector (b) or to give evidence before him, or shall wilfully alter, destroy, withhold, or refuse to produce any deed, paper, writing, instrument, or other document which may be lawfully required to be produced before any inspector (b) or the said Board, every person so offending shall be deemed and taken to have been guilty of a contempt of the High Court of Chancery (c), and shall be liable to be attached and committed by such Court on summary application by the Commissioners to the same, and shall pay the costs of and attending such contempt as the said Court shall direct. Persons refusing to render accounts, or to attend, &c. to be deemed guilty of a contempt of the Court of Chancery, &c. (a).

(a) See sects. 9 to 13, *ante*, and sect. 9 of the Charit. Trusts Amend. Act, 1855, *post*, p. 538.

Where the churchwardens and vestry clerk had refused to deliver accounts on the ground that the property in question was not within the Charit. Trusts Acts, Jessel, M. R., upon a motion to commit, ordered the churchwardens to pay the costs of the motion, but refused to make any order against the clerk personally, as he was only the officer of the churchwardens: *Re St. Bride's, Fleet Street, Church or Parish Estate*, W. N. 1877, 95, 149; 35 Ch. D. 147, n. See, also, *Re Sir Robert Peel's School at Tamworth*, L. R. 3 Ch. 543, cited in note (a) to sect. 10 of this Act, *ante*. Motion to commit.

Sect. 14
(b), (c).

(b) Now "assistant commissioner": Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

(c) Now the High Court of Justice: Jud. Act, 1873, s. 16.

Saving as to persons claiming adversely to charities (a).

15. Provided always, that nothing herein contained shall extend to give to the said Board or their inspectors (b) any power of requiring from any persons holding or claiming to hold any property whatsoever adversely to any charity, or free or discharged from any charitable trust or charge, any information, or the production of any deed or document whatever in relation to the property so held or claimed adversely, or any charitable trust or charge (c) alleged to affect the same.

(a) See also sect. 6 of the Charit. Trusts Amend. Act, 1855, *post*.

Meaning of "adversely to any charity."

As to this section, Lord Hatherley said, in *Re Sir Robert Peel's School at Tamworth*, L. R. 3 Ch. at p. 550, "a case cannot be considered to be governed by that (i.e. the present) section merely because the person holding the property says, 'I claim to hold this fund adversely to the charity,' where all the facts are before the Court, and upon the state of facts it is plain that no adverse claim has ever really been set up, or, if set up, could be established. I take it that when the matter comes on to be discussed . . . it is not only competent to us, but our duty, to consider whether there really is an adverse claim."

With regard to what is meant by claiming adversely to a charity, see note (g) to sect. 17 of this Act, *post*, p. 482.

(b) Now "assistant commissioners": Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

(c) An action by the managers of a school against a curate to recover money collected by him for the purposes of the school does not come within these words: *Christie v. Sandberg*, W. N. 1880, 159.

Board to receive applications for their opinion or advice (a).

16. The said Board shall receive and consider all applications which may be made to them by any trustee or other person having any concern in the management or administration of any charity, for their opinion, advice, or direction respecting such charity, or the management or administration thereof, or the estates, funds, property, or income thereof, or the application thereof, or any question or dispute relating to the same respectively, and, if they so think fit, may, upon any such application, give such opinion or advice as they think expedient, subject to any judicial order or direction

which may be subsequently made or given by any competent Court or judge; and such opinion or advice shall be in writing, signed by two or more of the said Commissioners, and sealed with the seal of the said Commission; and every trustee and other person who shall act upon or in accordance with the opinion or advice given by the said Board shall in respect of so acting be deemed and taken, so far as respects his own responsibility, to have acted in accordance with his trust; and no such judicial order or direction subsequently made or given by any Court or judge shall have any such retrospective effect as to interfere with or impair the indemnity by this Act given to trustees and other persons who have acted upon or in accordance with such opinion or advice of the said Board: Provided always, that nothing herein contained shall extend to indemnify any trustee or other person for any act done in accordance with the opinion or advice of the said Board, if such trustee or other person have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion or advice.

Sect. 18.

Persons acting on the advice of the Board to be indemnified.

(u) See also sect. 64 of this Act (*post*, p. 529), and sect. 46 of the Charit. Trusts Amend. Act, 1855 (*post*, p. 556), under which disputes among members of charities, whether subject to the Charit. Trusts Acts or not, may be referred to the arbitration of the Board. Arbitration.

The present section effects perhaps the most fundamental of all the changes wrought by the Charit. Trusts Acts in the position of charity trustees. It affords a simple means by which trustees may, in the absence of fraud or wilful concealment, obtain complete protection against liability; and it is not only to the advantage of trustees, but it may almost be said to be their duty, in cases of difficulty, to avail themselves of it: cf. *ante*, pp. 230, 231. Effect of section.

It will be noted that, in the case of charities falling within the Charit. Trusts Acts, the section goes far to supersede visitatorial functions, questions which would formerly have required to be determined by the visitor (see *ante*, pp. 77 *et seq.*) being now decided more simply, and quite as effectually, by the Charity Commissioners. Partially supersedes visitatorial functions.

Few formal orders of opinion and advice are now made. A mere indication of the opinion of the commissioners conveyed by letter or even verbally, affords practically the same protection to trustees as a formal order. The reason is, first, that this expression of opinion can at any time be supplemented by an order; and secondly, that legal proceedings calling in question the actions of the trustees cannot be initiated except with the sanction of the commissioners (see s. 17, *infra*). It is true that sect. 18 (*post*, p. 482) preserves the power of the Attorney-General to act *ex-officio*. In practice, however, he does not usually commence proceedings against Expression of opinion as effectual as order.

Sect. 16
(a).

charity trustees except upon a case certified to him by the commissioners under sect. 20 (*post*, p. 484).

Form of
application.

For form of application under this section, see App. II., Charity Commission Forms, No. 4, *post*.

Notice of
legal pro-
ceedings as to
any charity
by any person,
except the
Attorney-
General, to be
given to the
Board (a).

17. Before any suit, petition, or other proceeding (not being an application in any suit or matter actually pending (*b*)) for obtaining any relief, order, or direction concerning or relating to any charity (*c*), or the estate, funds, property, or income thereof, shall be commenced, presented, or taken, by any person whomsoever, there shall be transmitted by such person to the said Board, notice in writing of such proposed suit, petition, or proceeding, and such statement, information, and particulars as may be requisite or proper, or may be required from time to time, by the said Board, for explaining the nature and objects thereof; and the said Board, if upon consideration of the circumstances they so think fit, may, by an order or certificate (*d*) signed by their secretary (*e*), authorize or direct any suit, petition, or other proceeding to be commenced, presented, or taken with respect to such charity, either for the objects and in the manner specified or mentioned in such notice, or for such other objects, and in such manner and form, and subject to such stipulations or provisions for securing the charity against liability to any costs or expenses, and to such other stipulations or provisions for the protection or benefit of the charity, as the said Board may think proper; and such Board, if it seem proper to them, may by such order or certificate as aforesaid require and direct that any proceeding so authorized by them in respect of any charity, shall be delayed during such period as shall seem proper to and shall be directed by such Board; and every such order or certificate may be in such form and may contain such statements and particulars as such Board shall think fit; and (save as herein otherwise provided) no suit, petition, or other proceeding for obtaining any such relief, order, or direction as last aforesaid shall be entertained or pro-

ceeded with by the Court of Chancery (*f*), or by any Court or judge, except upon and in conformity with an order or certificate of the said Board : Provided always, that this enactment shall not extend to or affect any such petition or proceeding in which any person shall claim any property or seek any relief adversely to any charity (*g*).

Sect. 17.

Courts not to entertain proceedings as to charities, except upon certificate of the Board.

(*a*) As to the object which the legislature had in view in framing this section, see n. (*a*) to sect. 1 of this Act, *ante*, p. 467.

Cases to which Section applies.

It may be laid down, as a general rule, that in every case having reference to the administration of the charity property, an order or certificate of the Charity Commissioners, under this section, must be obtained before the proceedings are commenced.

Administration.

Thus, an action by a minister and churchwardens against the late churchwardens to obtain the transfer of a charitable legacy, was held to require the sanction of the Charity Commissioners : *Hodgson v. Forster*, W. N. 1877, 74.

Transfer of legacy.

In *Braund v. Earl of Devon*, L. R. 3 Ch. 800, a testator gave his pure personal property upon trust to found and support a school for the gratuitous education of boys, preference to be given to the lineal descendants of his grandfather. It was held that a bill by three of such lineal descendants against the trustees praying administration of the estate, and that provision might be made for their education, required the sanction of the commissioners, on the ground that, the only interest of the plaintiffs being as objects of the charity, the claim was merely for administration.

Claim to partake in charity funds.

The case is the same where, although administration is not expressly asked for, the claim is really to receive a share of the funds of the charity.

Administration not asked for.

In *Brittain v. Overton*, 25 Ch. D. 41, n., the plaintiff was the master of a free school. He alleged that the former trustees of a certain charity (the defendants being the present trustees) had agreed that he should receive the net income of the charity in consideration of his teaching ten additional free scholars, that he had duly taught such scholars, but that the defendants refused to pay him the income; and he claimed an account and payment. Jessel, M. R., held, that the certificate of the commissioners was necessary. "The case," said his Lordship, "is merely that of a man claiming to be a recipient of part of the proceeds of a charity asking the Court to administer the trusts of the charity for the purpose of getting the benefit of the charity."

Brittain v. Overton.

In *Benthall v. Earl of Kilmorey*, 25 Ch. D. 39, the plaintiff had been appointed medical superintendent of a hospital. Under the trust deed of the hospital the office was tenable for life, subject to removal on three months' notice for neglect of duty. The plaintiff had also been let into possession of a house annexed to the office. The funds of the hospital being insufficient to maintain a resident medical officer, the committee gave the plaintiff three months' notice of removal, but no charge of neglect of duty was brought against him. The plaintiff commenced an action against the committee for a declaration that he was entitled to hold his office during good behaviour,

Benthall v. Earl of Kilmorey.

- Sect. 17**
(a). and for an injunction to restrain them from ejecting him from his residence, and otherwise interfering with his tenure of office. Chitty, J., held that the plaintiff was really claiming part of the charity estate as beneficially belonging to him for life, and that it was therefore necessary to obtain the sanction of the Charity Commissioners. On appeal, it was held that if the relief asked went beyond restraining the defendants from excluding the plaintiff from his office and house, the consent of the Charity Commissioners was required. Whether it would have been required, if the action had been merely to restrain such exclusion, was not decided. As to this, see *Holme v. Guy*, *infra*; and cf. note (a) to sect. 15 of this Act, *ante*, p. 474.
- Mandamus.** An action for a mandamus is a "proceeding" within this section: *Att.-Gen. v. Dean and Canons of Manchester*, 18 Ch. D. 596.
- Proceedings in pursuance of special Act.** The consent of the Board to proceedings is necessary, although they are taken in pursuance of a private Act. Thus, where a private charity Act (passed shortly before the Charit. Trusts Act, 1853) gave power to the trustees in any matter in which they were to act with the approbation of the Court of Chancery, to lay proposals at once before the judge in chambers, it was held by Kindersley, V.-C., that this was not repealed by the present section, but that the necessity of a preliminary application to the Charity Commissioners was added: *Re Bingley Free School*, 2 Dr. 283.
- Cases to which Section does not apply.*
- No charity in question.** This section, of course, does not apply to cases which do not relate to a charity at all.
- Thus, where an action was brought to establish the right of the individual freemen of a borough to participate, for their own benefit, in the proceeds of certain properties vested in the corporation, it was held, by Hall, V.-C., that the property was not charitable, and that the consent of the Charity Commissioners to the action was not necessary: *Prestney v. Mayor, &c., of Colchester*, 21 Ch. D. 111. See, however, with regard to this case, *ante*, p. 13, and p. 70, n. (a).
- Doubt as to validity of charitable gift.** Similarly, where it is doubtful whether the devotion of the property in question to charity is valid under 9 Geo. II. c. 36 (now Part II. of the Mortm. and Charit. Uses Act, 1888, *ante*, pp. 386 *et seq.*), or whether the charitable purposes intended can be carried into effect: *Re St. Giles, &c., Volunteer Corps*, 25 Beav. 316.
- Common law actions.** Nor does the section extend to any proceeding which, prior to the Judicature Act, 1873, could have been brought only in a court of common law, as an action of trespass or ejectment: per Jessel, M. R., in *Holme v. Guy*, 5 Ch. D. at p. 905.
- Such actions are not within the language of the section, "any suit, petition, or other proceeding . . . for obtaining any relief, order, or direction concerning or relating to any charity, or the estate, funds, property, or income thereof, &c.": *ibid.*
- Holme v. Guy.*** In *Holme v. Guy*, *supra*, the governors of an endowed school commenced an action against the master to restrain him from presenting himself at the school and teaching therein, and from remaining in occupation of the school house, on the ground that he had never been properly appointed to the mastership, and also that he had been removed by a resolution of the governors. The master demurred, on the ground that the action had not

been sanctioned by the Charity Commissioners. It was held, however, that that was not requisite.

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(a).

"It is, in my judgment, clear," said James, L. J. (at p. 910), "that the 17th section of the Charitable Trusts Act, 1853, was never intended to interfere with the rights or powers of the trustees of a charity in their character of owners of property, or to interfere with their rights in their character of masters who are employing servants. Its object was to prevent strangers from coming as relators in suits in Chancery, or as petitioners under Sir Samuel Romilly's Act (52 Geo. III. c. 101), to complain of the management of a charity, unless the Charity Commissioners are first satisfied that such proceedings ought to be taken. It was not intended to prevent the trustees of a charity from bringing an action of ejectment against a tenant holding over, or an action of covenant against a tenant who would not pay his rent, or to prevent their taking proceedings by way of distress against a defaulting tenant, or to prevent their taking proceedings against a man who, as according to the statements in the claim is the case here, never was properly appointed to an office, but will persist in retaining it, and thrusting himself on the property of the charity as a trespasser. Such cases, under the old practice, were to be tried in an action of law to which the Act of Parliament does not apply." See also *Benthall v. Earl of Kilmorey*, 25 Ch. D. at p. 45, stated *ante*, p. 477.

Where an Act of Parliament vested certain common land in a committee, and directed that it should be let by them, and that the rents should be received by the overseers, and handed over by them to the committee to be applied in the purchase of fuel for distribution among poor persons, it was held that an action by the committee against the overseers to recover the rents received by them did not require the sanction of the Charity Commissioners: *Alexander v. Drewett*, 2 Times L. R. 762.

Nor does the section apply to proceedings in the case of a charity falling within the exemptions contained in sect. 62 of this Act. See note (a) to that section, *post*, pp. 523, 524, and cases there cited.

Exempted charities.

Where an institution falling within sect. 62, as, for instance, a college of a university, has a joint interest in a charitable fund with another charity not within that section, it is necessary, in order to determine whether the consent of the commissioners is necessary, to look at the object of the particular application.

Exempted and non-exempted institution jointly interested.

"If it is to affect matters of which the college is the object, then you need not go before the commissioners, but if it is to effect an end of which another charity is the object, then it would be necessary to go before the commissioners:" per Kindersley, V.-C., in *Re Meyrick's Charity*, 24 L. J. Ch. 669; see note (a) to sect. 62, *post*, pp. 523, 524.

Re Meyrick's Charity.

In the last-mentioned case part of an estate belonged to a school, and the residue to purposes connected with a college, and it was held that an application for purposes connected with the college did not require the sanction of the Charity Commissioners.

Att.-Gen. v. Dean and Canons of Manchester, 18 Ch. D. 596, was the converse case. There certain revenues were to be applied by the dean and canons in payment of church expenses, and the residue transferred to the Ecclesiastical Commissioners to be applied by them in increasing the incomes of incumbents of parish benefices. The action was brought by the Attorney-General on the relation of certain of these incumbents on behalf of all for a *mandamus*

Att.-Gen. v. Dean, &c. of Manchester.

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(a).

to the dean and canons to render accounts. It was held by Hall, V.-C., that the relief asked, being in respect of a charitable fund which the Ecclesiastical Commissioners had to administer, and with which, as soon as it was paid to the commissioners, the dean and canons had no further concern, the case was not within sect. 62, and the consent of the Charity Commissioners was necessary.

Express exceptions from section.

By the express words of this section there are excluded from its operation: (1) applications "in any suit or matter actually pending," and (2) any proceedings "in which any person shall claim any property or seek any relief adversely to any charity."

Proceedings adverse to charity.
"Suit or matter actually pending."
Final order made on petition.

The question as to what are proceedings adverse to a charity is dealt with in note (g) to the present section, *post*.

"Suit or matter actually pending," means pending at the time of the application, not of the passing of the Act: *Re Lister's Hospital*, 6 De G. M. & G. at p. 187.

When a final order has been made on a petition, it is no longer a matter "actually pending." Thus, the consent of the commissioners was required to a petition for the appointment of new trustees under a scheme ordered and settled by the Court upon a previous petition: *Re Jarvis' Charity*, 1 Dr. & Sm. 97; and see *Re Duncan*, L. R. 2 Ch. 356.

So where a case had been before the Court under Romilly's Act, and an order made by which a scheme was approved, and the trustees directed to make certain payments out of the funds, and to invest the residue, it was held that a petition for the erection of a new school with part of the charity funds, required the sanction of the commissioners. "It appears to me," said Kindersley, V.-C., "that this is one which must be considered as a new application of a part of the charity funds, and the spirit of the Act appears to me to be this, that if the intended application to the Court is for a new application of the charity funds, it should not be made except under the sanction of the commissioners. If in this case the application had been merely to add new rooms to an existing school, it might not perhaps have been necessary to obtain the commissioners' sanction." *Re Ford's Charity*, 3 Dr. 324. See also *Re Lister's Hospital*, 6 De G. M. & G. 184.

Payment into Court under Trustee Relief Act.

The certificate of the commissioners is not necessary to enable trustees to pay a charitable fund into Court under the Trustee Relief Act: *Re St. Giles, &c. Volunteer Corps*, 25 Beav. 313; *Re Poplar and Blackwall Free School*, 8 Ch. D. at p. 546.

Subsequent dealings with fund.

And where a fund has been so paid into Court, the Court may proceed to give directions as to its investment and so forth, without the certificate of the Charity Commissioners: *Re St. Giles, &c. Volunteer Corps*, *supra*.

The earlier case of *Re Markwell's Legacy*, 17 Beav. 618, which decided the contrary, was overruled by *Re Lister's Hospital*, cited *infra*: see *Re St. Giles, &c. Volunteer Corps*, *supra*.

Administra-
tion.

In *Re St. Giles, &c. Volunteer Corps*, *supra*, a scheme was directed with regard to the money in Court. It may, perhaps, be doubted whether this did not go beyond *Re Lister's Hospital*, *infra*, inasmuch as it was not confined to giving directions necessarily supplemental to the payment into Court, but dealt with the charity *quā* charity.

In *Re Poplar and Blackwall Free School*, 8 Ch. D. 543, it was held that administration of charitable funds without the consent of the commissioners could not be obtained by the trustees paying the fund into Court and then

presenting a petition for its administration, for by the payment into Court the trustees were discharged from their office. They were accordingly not allowed the costs of the petition: and see *ante*, p. 233.

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(a)—(d).

Similarly, the certificate of the Charity Commissioners is not required to enable a railway or other company which has purchased charity lands under the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), to pay the purchase-money into Court under that Act.

Payment into Court under Lands Clauses Act.

Applications for the investment of moneys so paid in may be made without the certificate of the commissioners: *Re Cheshunt College*, 1 Jur. N. S. 995, where the money was applied in enfranchising copyholds; *Re Lister's Hospital*, 6 De G. M. & G. 184 (by which the earlier cases of *Re L. B. & S. C. Ry. Co.*, 18 Beav. 608, and *Re Skeat's Charity*, 25 L. J. Ch. 49, were overruled), and *Re William of Kyngeston's Charity*, 30 W. R. 78, in both of which cases the money was applied in purchasing other lands; *Re St. Pancras Burial Ground*, L. R. 3 Eq. 173. See also *Re Rehoboth Chapel*, L. R. 19 Eq. 180; *Re Faversham Charities*, 10 W. R. 291; and *Ex parte Governors, &c. of Norfolk Clergy*, W. N. 1882, 53.

Investment.

In the case of *Re Lister's Hospital*, *supra*, it was held by the Court of Appeal in Chancery that the assent of the Charity Commissioners was not necessary to an application for the disposal of money paid into Court by a railway company for the purchase of land belonging to the charity. Lord Cranworth, C., in giving judgment, said (at p. 187), "By 'any suit or matter actually pending,' is meant pending at the time of the application, not pending at the passing of the Act. In the present case, the matter being before the Court by the payment of the money, the petitioners were entitled to make an application for its investment, and to have the order which they ask."

Re Lister's Hospital.

The difficult cases relating to applications for payment out to persons becoming absolutely entitled are dealt with *ante*, pp. 281, 282.

Payment out.

So far as the present section is concerned the consent of the Charity Commissioners to such applications is not required, for they are as much applications "in a suit or matter actually pending" as applications for investment are: see *Re Lister's Hospital*, *supra*, where the petition asked in part for payment out. See also *Ex parte Trustees of Tid St. Giles' Charity*, 17 W. R. 758; *Re Spurstowe's Charity*, L. R. 18 Eq. 279.

The sanction of the Charity Commissioners is, however, required in these cases for another reason, which is, that charity trustees, certainly where they have no power of sale, and probably where they have a power of sale, are not persons absolutely entitled under sect. 69 of the Lands Clauses Act: see cases cited *ante*, p. 281, n. (m).

(b) As to this exception, see the last note.

(c) For the meaning of "charity," see sect. 66 of this Act, *post*, p. 531, and sect. 48 of the Charit. Trusts Amend. Act, 1855, *post*, p. 557.

Meaning of charity.

As to the power of a majority of trustees to institute proceedings when authorized by the Board, see Charit. Trusts Act, 1869, s. 13, *post*.

Power of majority of trustees to act.

(d) Where the case is one for which the certificate of the Charity Commissioners is required, the Court has no jurisdiction to hear it without such certificate, and no assent by any of the parties can give jurisdiction: *Glen v. Gregg*, 21 Ch. D. at p. 518, per Jessel, M. R.

Certificate cannot be dispensed with.

Accordingly, the certificate cannot be dispensed with because the case is of a pressing nature: *Ex parte Watford Burial Board*, 2 Jur. N. S. 1045; *Thomas v. Harford*, 48 L. T. N. S. 262. In the latter case, an interim injunction.

Sect. 17 (d)–(g).	tion to restrain interference with ancient lights was refused because the formal certificate of the commissioners had not been obtained.
Formal certificate required.	Nor is anything short of the formal certificate of the Charity Commissioners sufficient. A letter signed by the secretary of the commissioners to the effect that the commissioners are prepared to issue their certificate, and that it will be issued in due course, is not sufficient, even though the matter be of a pressing character: <i>Thomas v. Harford, supra</i> .
Nature of certificate required.	The certificate required is, not that the commissioners approve of the application being granted, but only that they approve of its being made: <i>Ex parte Watford Burial Board</i> , 2 Jur. N. S. 1045.
Certificate must be pleaded.	It appears that the fact that the certificate of the commissioners has been obtained should be pleaded. In the absence of such an allegation the pleading was, under the old practice, demurrable: <i>Braund v. Earl of Devon</i> , L. R. 3 Ch. 800. And now the course prescribed in lieu of demurrer may be taken: R. S. C. 1883, Ord. XXV.
Stay of proceedings.	Where an action has been commenced without the necessary certificate, an order to stay all further proceedings may be obtained by the defendants: <i>Hodgson v. Forster</i> , W. N. 1877, 74.
Form of application.	A form of application for a certificate authorizing the institution of proceedings will be found in App. II. Charity Commission Forms, No. 5, <i>post</i> .
Claiming adversely to charity.	(e) Or any officer of the Board for the time being authorized to act on behalf of the secretary: Charit. Trusts Act, 1887, s. 3, <i>post</i> .
	(f) Now the High Court of Justice: see Jud. Act, 1873, sect. 34, sub-s. (3).
	(g) With regard to what is meant by claiming adversely to a charity, see <i>Brittain v. Overton</i> , 25 Ch. D. 41, n., and <i>Benthall v. Earl of Kilmorey</i> , 25 Ch. D. 39.
Opinion of Jessel, M. R.	It appears from those cases that where the claim raised is really to participate in the funds of the charity it cannot be an adverse claim. Thus, in <i>Brittain v. Overton, supra</i> , a claim by a schoolmaster to have charity funds paid to him, and in <i>Benthall v. Earl of Kilmorey, supra</i> , a claim by a resident medical officer of a hospital established by a trust deed, were held not to be claims adverse to the charities.
	It was said by Jessel, M. R., in <i>Brittain v. Overton, supra</i> (at p. 43, n.), "That (i.e., the proviso to the present section) obviously refers to a case in which, pending a Chancery suit, you might by petition, which was the proper mode, claim <i>pro interesse suo</i> , or where you might take a proceeding in equity where you could not bring an action at law. For instance, the legal estate might be outstanding, or you might claim money by suit in equity, on the ground that it was the proceeds of land not well given to the charity.
	"Those things are the subjects of relief adversely to the charity, that is, you do not claim under the charity trusts, alleging that the claim is for property not affected by the charity trusts. That is what I understand by claiming adversely to the charity." See also <i>Re Sir Robert Peel's School at Tamworth</i> , L. R. 2 Ch. 543, cited in note (a) to sect. 15 of this Act, <i>ante</i> , p. 474.
Saving for the Attorney-General acting <i>ex officio</i> (a).	18. Provided always, that it shall be lawful for her Majesty's Attorney-General acting <i>ex officio</i> to make such applications, and take and prosecute such proceedings with respect to any charity, in the Court of Chancery (b)

or otherwise as to him may seem fit, as if this Act had not been passed; and that nothing in this Act contained shall be construed as dispensing with the fiat or allowance of her Majesty's Attorney-General, with respect to any proceeding not being an application under the jurisdiction created by this Act where such fiat or allowance was necessary before the passing of this Act (c). Sect. 18.

(a) As to the power of the Attorney-General to institute proceedings *ex officio*, see *ante*, pp. 89, 315 *et seq.* *Ex officio* proceedings.

By sect. 43 of this Act, *post*, p. 507, the Attorney-General acting *ex officio* is authorized to petition under Romilly's Act.

(b) Now the Chancery Division of the High Court: Jud. Act, 1873, ss. 16, 34, sub-s. (3).

(c) The fiat of the Attorney-General is required to actions in the nature of informations (*ante*, pp. 315, 317, n. (a)), and also to petitions presented under Romilly's Act and other Acts: *ante*, pp. 332, 336. Fiat of Attorney-General.

19. Provided also, that where upon any report of any inspector (a) under this Act or otherwise it appears to the said Board (b) that any suit, petition, or other proceeding concerning or relating to any charity, or the estate, funds, property, or income thereof, would be proper or expedient, it shall be lawful for the said Board by their order to authorize or direct such suit, petition, or proceeding to be commenced, presented, or taken, and to give such directions in relation thereto as the said Board may think proper; and thereupon such suit, petition, or proceeding may be commenced, presented, or taken accordingly, without any such previous notice in writing as hereinbefore mentioned (c); and the said Board, before giving any such opinion, advice, or direction upon any such application as aforesaid, or making any such order or certificate after notice to them as aforesaid, may, where local inquiry appears to them to be requisite, cause such inquiry to be made by one of their inspectors (a); and the said Board may, in any case where they see fit, before acting upon the report of any inspector (a), cause such report to be deposited for local inspection, and give notice of the same being so deposited,

Board may, upon the report of an inspector, &c., authorize proceedings, and may in other cases cause local inquiries by their inspector.

Sect. 19. and consider any statements or objections which may be transmitted to them in relation thereto.

(a) Now "assistant commissioner": see sect. 2, sub-s. (3) of the Charit. Trusts Act, 1887, *post*.

(b) Defined by sect. 66, *post*, to mean the Charity Commissioners sitting as a Board under this Act: see sect. 6, *ante*.

(c) See sect. 17, *ante*.

Board may
certify certain
cases to the
Attorney-
General (a).

20. In any case in which it shall appear to the said Board that the institution of legal proceedings is requisite or desirable with respect to any charity, or the estates, funds, property, or affairs thereof, and that under the circumstances thereof it is desirable that such proceedings should be instituted by the Attorney-General, it shall be lawful for the said Board, if they so think fit, to certify such case, in writing under the hand of the secretary (b) of the said Board, to her Majesty's Attorney-General, together with such statements and particulars (if any) as in the opinion of the said Board may be requisite or proper for the explanation of such case; and thereupon the said Attorney-General, if upon consideration of the circumstances he think fit, shall institute and prosecute such legal proceedings as he shall consider requisite or proper under the circumstances of such case, by information (c) or petition in the Court of Chancery (d), or by application to a judge thereof at chambers, or to a *District Court of Bankruptcy* (e), or County Court, under the jurisdiction given by this Act (f).

(a) The Attorney-General does not usually initiate charity proceedings except upon a case certified to him under this section: see *ante*, pp. 475, 476.

(b) Or any officer authorized by order of the Board to act on behalf of the secretary: Charit. Trusts Act, 1887, s. 3, *post*.

(c) Now action: R. S. C. 1883, Ord. I. r. 1; *Att.-Gen. v. Shrewsbury Bridge Co.*, W. N. 1880, 23; see *ante*, pp. 315 *et seq*.

(d) Now the Chancery Division of the High Court: Jud. Act, 1873, ss. 16, 34, sub-s. (3). As to petitions, see *ante*, pp. 328 *et seq*.

(e) The words in italics were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 130.

(f) Sects. 28, 29, 32, 37, *post*.

Board may
sanction the
granting of

21. If in any case it appear to the trustees or persons for the time being acting in the administration or

management of any charity, or the estates or property thereof, that any part of the charity lands or estates may be beneficially let on building, repairing, improving, or other leases, or on leases for working any mine, or that the digging for or raising of stone, clay, gravel, or other minerals, or the cutting of timber, would be for the benefit of the charity, or that it would be for the benefit of such charity that any new road or street should be formed or laid out, or any drains or sewers made through any part of the charity estates, or that any new building should be erected, or that any existing building should be repaired, altered, rebuilt, or wholly removed, or that any other improvements or alterations in the state or condition of the lands or estates of such charity should be made, it shall be lawful for such trustees or persons to lay before the said Board a statement and proposal in relation to any of the matters aforesaid; and it shall be lawful for the said Board, if they think that the leases or acts to which the statement and proposal relate (with or without modifications or alterations) would be beneficial to the charity, to make such order under their seal for and in relation to the granting of such leases, or the doing of any other such acts as aforesaid, and any circumstances connected therewith, as they may think fit, although such leases or acts respectively shall not be authorized or permitted by the trust (b); and the said Board, by any such order, may authorize the application of any monies or funds belonging to the charity for any of the purposes or acts aforesaid, and, if necessary, may authorize the trustees to raise any sum of money by mortgage of all or any part of the charity estates; *provided that compulsory provisions be reserved in every such mortgage for the payment of the principal money borrowed by annual instalments, and for the redemption and re-conveyance of the mortgaged estates, within the period of not more than thirty years* (c).

Sect. 21.

building, &c.
leases, the
working of
mines, the
doing of
repairs and
improvements (a);

and may
authorize the
application of
the charity
funds or the
raising of
money on
mortgage for
those purposes.

(a) With regard to leases of charity lands, see *ante*, pp. 265, 266, where an outline of the statutory provisions will be found. Those provisions are

Sect. 21 (a), (b), (c).	contained in sect. 26 of this Act, sects. 16, 29, 38, and 39 of the Charit. Trusts Amend. Act, 1855, and sect. 12 of the Charit. Trusts Act, 1869.
	The powers of the Board are not affected by the fact that similar powers to be exercisable only with the sanction of the Court have been given by a private Act or an order of the Court: Charit. Trusts Act, 1862, s. 1, <i>post</i> .
Elem. Educ. Act, 1870.	By the Elem. Educ. Act, 1870 (33 & 34 Vict. c. 75), s. 22, the provisions of the Charit. Trusts Acts, 1853 to 1869, relating to the sale, leasing, and exchange of charity lands, are extended to the sale, leasing, and exchange of land or school-houses belonging to a School Board and not required by them, the Education Department being substituted for the Charity Commissioners.
Order authorizing lease.	(b) The order authorizing a lease is usually written upon the engrossment of the lease intended to be granted, and a copy, identified by the seal of the Board and numbered, is deposited in the office of the Charity Commissioners. The order authorizes the granting and execution within six months of the particular lease upon the engrossment of which it is written.
Application.	Forms of application for such authority will be found in App. II., Charity Commission Forms, Nos. 6, 7, <i>post</i> . As to the mode of application, see Charit. Trusts Act, 1869, s. 5, <i>post</i> . As in the case of a sale (<i>post</i> , p. 490), so in the case of a lease, the commissioners require to be furnished with a report of a surveyor unconnected with the proposed lessee, which should follow the lines indicated in Form No. 8 of the Charity Commission Forms, printed in App. II., <i>post</i> .
Provisions as to building leases not inserted in scheme.	In <i>Re Henry Smith's Charity</i> , 20 Ch. D. 516, a clause in a proposed scheme as to building leases was struck out, leaving the granting of such leases to be governed by the present section.
Order authorizing repairs, &c.	Where an order authorizing the employment of the charity funds in repairs and improvements is required, a statement must be submitted to the Charity Commissioners of the nature of the repairs or improvements required. Plans and specifications of proposed new buildings, &c., must also be submitted; and the commissioners further require to be informed of the sum (including incidental expenses) which will be required for carrying out the works.
	The order then authorizes the works to be carried out in accordance with the plans at the specified cost. And the necessary directions are given for raising the required funds by mortgage, or, where there are available funds, for appropriating them to the required objects.
	Principal money raised on mortgage, together with interest and capital money of the charity employed for any of the above-mentioned purposes, is required to be recouped out of income: see note (c), <i>infra</i> .
Concurrence of official trustee in mortgages.	In the case of a mortgage, as in the case of a sale (see <i>post</i> , p. 491), the official trustee of charity lands is, if the land to be mortgaged is vested in him and the mortgagee so requires, directed to concur in the mortgage. His concurrence is, however, unnecessary: see <i>ibid</i> .
Repeal.	(c) The words in italics are repealed by sect. 30 of the Charit. Trusts Amend. Act, 1855, <i>post</i> , which prescribes provisions for paying off mortgages by means of a sinking fund and otherwise.
Extension of powers.	By sect. 15 of the Charit. Trusts Act, 1860 (<i>post</i> , p. 572), the power given by this section of authorizing the application of funds belonging to or raised by mortgage of charity property is extended to other beneficial objects not inconsistent with the trusts or intentions of the foundation.
Recouping	The Charity Commissioners, following the rule adopted by the Court (see

ante, pp. 265, 266), usually require any expenditure out of the capital of a charity to be recouped out of income.

Where there are funds belonging to the charity standing in the name of the official trustees of charitable funds, a mode commonly adopted by the Charity Commissioners of providing for the recouping of capital expenditure out of income is to direct the official trustees to transfer a sum of government stock to an "investment account," and to invest the dividends on the sum so transferred at compound interest in the purchase of the like stock to the same account until the capital sum expended has been replaced.

In other cases the commissioners direct the charity trustees to cause to be remitted, on or before a specified day in every year during a specified period, out of the income of the charity a sum of not less than a stated amount to the banking account of the official trustees of charitable funds at the Bank of England. The official trustees are directed to invest the annual sums so remitted at compound interest in government stock to the credit of a sinking fund account, until the capital sum raised has been replaced.

The last-mentioned method is commonly adopted for paying off the principal sum raised on mortgage, the charity trustees being also directed to keep down the interest out of the income of the charity. Thus provision is made for the regular payment of interest, and for the repayment of the principal within a limited number of years.

An order authorizing a mortgage always contains a provision that the mortgage "shall contain no power or authority for the mortgagee to sell all or any part of the mortgaged hereditaments, either express or by implication, and that any such implication shall be expressly negatived."

Although a mortgagee is entitled, where a fund is authorized to be raised on mortgage, to have a regular mortgage executed, yet, as a matter of practice, this is often not required, the mortgagee being satisfied with the provision for repayment made by the order of the commissioners.

22. It shall be lawful for the Board (*b*), upon proof to their satisfaction that any schoolmaster or schoolmistress or other officer of any charity has been negligent in performing his or her duties, or that he or she is unfit or incompetent to discharge them properly, either from immoral conduct, age, or any other cause whatsoever, to empower the trustees of such charity to remove such schoolmaster or mistress or other officer, and to charge the salary of his or her successors, or any other portion of the revenues of the charity, with such retiring pension or allowance, if any, in favour of the person so removed, and generally to impose such conditions as to the said Board shall appear proper: Provided always, that where there shall be any special visitor of the charity, the consent of such visitor, in writing under his hand, shall be necessary in order to such removal (*c*).

(*a*) See further, as to the removal of schoolmasters and schoolmistresses,

Sect. 21
(*c*).

expenditure
out of income.
Modes of
recouping.

Paying off
mortgage.

Mortgage
does not
contain
power of sale.

Formal
mortgage
often dis-
pensed with.

Board may
authorize
trustees to
remove
officers (*a*).

Sect. 22
(a), (b), (c).

&c., sects. 2, 13, and 14 of the Charit. Trusts Act, 1860, *post*, and note (i) to sect. 2.

(b) Defined to mean the Charity Commissioners sitting as a board: sect. 66 of this Act, *post*.

(c) See *ante*, p. 85.

Board may
sanction
compromise
of claims on
behalf of
charity (a).

23. If in any case it appear to the trustees or persons acting in the administration of any charity that any claim or demand or cause of suit against any person in relation to such charity may, with advantage to the charity, or should, under the special circumstances of the case, be compromised or adjusted without taking or without continuing any proceedings at law or in equity, such trustees or persons may, or the person against whom such claim, demand, or cause of suit exists or is alleged to exist, may, with the consent of the trustees or persons acting in the administration of such charity, submit to the said Board a statement and proposal for such compromise or adjustment (b); and if it appear to the said Board after such inquiry in relation thereto by one of their inspectors (c), as they may deem requisite, or otherwise, that such proposal, either with or without any modification, is fit and proper, and for the benefit of the charity, it shall be lawful for the said Board to make such order for and in relation to such compromise or adjustment as they may think fit; and upon the due performance of the terms and conditions of such compromise or adjustment as aforesaid, such agreement shall be a final bar to all actions, suits, claims, and demands by or on behalf of the charity concerned therein, in respect to the cause of action, suit, or matter in respect to which such compromise or adjustment shall have been made.

Extension of
powers.

(a) By sect. 31 of the Charit. Trusts Amend. Act, 1855, *post*, the power of the Board is extended to authorize the compromise of claims, &c., against charities or the trustees thereof.

Order for
partition.

An order for partition may sometimes be made under these sections: see note (a) to sect. 32 of the Charit. Trusts Amend. Act, 1855, *post*.

The powers of this section are specially adapted to orders for the redemption of rent-charges, and as a matter of practice such orders are almost invariably carried out under this section, and not under sect. 25 of this Act. The form of order in such a case is stated in note (a) to that section, *post*.

(b) As to the mode of application, see Charit. Trusts Act, 1869, s. 5, *post*.

(c) Now "assistant commissioners:" Charit. Trusts Act, 1887, s. 2, sub-s. (2), *post*. **Sect. 23**
(c).

24. Upon application to the said Board by the trustees or persons acting in the administration of any charity, representing to the said Board that, under the special circumstances of any land belonging to the charity, a sale or exchange of such land can be effected on such terms as to increase the income of the charity, or would otherwise be advantageous to the charity, such Board may, if they think fit, inquire into such circumstances, and if after inquiry they are satisfied that the proposed sale or exchange will be advantageous to the charity, may authorize the sale or exchange, and give such directions in relation thereto, and for securing the due investment (*b*) of the money arising from any such sale, or by way of equality of exchange for the benefit of the charity, as they may think fit.

Board under special circumstances, may authorize sale or exchange of charity lands (*a*).

(*a*) With regard to sales of charity lands generally, see *ante*, pp. 250 *et seq.*; and with regard to exchanges, see *ante*, pp. 267 *et seq.*

Sales and exchanges authorized by the Board are as valid as if they had been directed by the express terms of the trust (see s. 26 of this Act), and notwithstanding disabling Acts: Charit. Trusts Amend. Act, 1855, s. 38, *post*. **Validity.**

By s. 29 of the Charit. Trusts Amend. Act, 1855, *post*, restrictions are placed on sales by charity trustees. And by s. 12 of the Charit. Trusts Act, 1869, where trustees have power to determine on a sale or exchange, a majority may act. **Restriction on sales by trustees.**

Provision is made for payments for equality of exchanges and for payment of expenses by sects. 32 and 34 respectively of the Charit. Trusts Amend. Act, 1855, *post*. **Power of majority to act.**

The powers of the Charity Commissioners under this section are not impaired by the fact that similar powers, to be exercisable only with the sanction of the Court, have been given by a private Act or an order of the Court: Charit. Trusts Act, 1862, s. 1, *post*. **Payments for equality of exchange, &c.**

The power of authorizing a sale given by this section is not affected by the Allotments Extension Act, 1882: *Parish of Sutton to Church*, 26 Ch. D. 173. **Private Act, or decree giving similar powers exercisable only with sanction of Court.**

By the Elem. Educ. Act, 1870 (33 & 34 Vict. c. 75), s. 22, the provisions of the Charit. Trusts Acts, 1853 to 1869, which relate to the sale, leasing, and exchange of lands belonging to any charity, are extended to the sale, leasing, and exchange of the whole or any part of any land or school-house belonging to a school board which may not be required by such board, with the modification that the Education Department is for the purposes of the section substituted for the Charity Commissioners. **Allotments Extension Act, 1882. Elem. Educ. Act, 1870.**

Sect. 24

(a).

Sale by private contract.

Procedure in case of Sale.

Trustees desiring to have a proposed sale carried through the office of the Charity Commissioners with the greatest expedition should transmit to them an application in Form No. 9 of the Charity Commission Forms, printed in App. II., *post*, together with a report of a surveyor of respectability unconnected with the proposed purchaser. This report should follow the lines indicated in Form No. 10 of the Charity Commission Forms in App. II., *post*. The main points upon which the commissioners desire information from the surveyor are (1) as to the intrinsic value of the property, apart from the proposal for its purchase; and (2) as to any addition to that intrinsic value which the vendors should require, having regard to the special relation of the intending purchaser to the property.

The trustees would do well, especially if they receive a highly advantageous offer, to enter into a provisional contract for sale before applying to the commissioners.

The contract entered into should be conditional on the sanction of the commissioners being obtained.

Upon receiving the application and report, the commissioners, if the proposal seems sufficiently advantageous to the charity, usually direct notice of the proposed sale to be published in the locality. This is done with the view of testing the propriety of the sale and the sufficiency of the terms offered.

Where the proposed sale does not appear to the commissioners to be such as to justify them in proceeding with it at once, they frequently require to be furnished with a report from a surveyor of their own nomination. The commissioners have no surveyor attached to their office; the further report is consequently made in the first instance at the cost of the charity. The commissioners, however, usually make it a condition of their assent to a sale that the purchaser shall accept the title of the trustees, and shall pay all costs incidental to the sale, including the charges of all surveyors employed. If a title is deduced and verified, the cost is similarly paid by the purchaser.

If the proposed sale is one which, on the face of it, offers no advantage to the charity, the commissioners may decline to proceed with it.

Where the publication of the notice above mentioned elicits no objections to the sale and no offers of a higher price, an order is made authorizing the trustees within six months to sell the property for not less than the price named, "and to do and execute all proper acts and assurances for carrying the said sale into effect, and to give a conclusive discharge to the purchaser for the said purchase-money."

If, on the other hand, objections are made or higher offers obtained, they are considered by the commissioners, with the result sometimes, after communication with the parties making such higher offers, of securing to the charity a price largely in excess of that originally offered. Sometimes, in such cases, the commissioners require the property to be put up for sale by auction.

Sale by auction.

Where the trustees desire to sell by auction in the first instance, they should submit to the commissioners an application and report, as in the case of a sale by private contract. The report should indicate whether it is proposed to offer the property for sale in one or more lots, and if in more than one, how it is proposed to divide the property; it should also state the surveyor's opinion as to the reserve price to be placed upon each lot.

If the commissioners approve of the proposal they usually direct the trustees to cause particulars and conditions of sale to be prepared, at the

same time transmitting either Form No. 11 or Form No. 12 of the Charity Commission Forms, printed in App. II., *post*, to be inserted in the conditions; and the particulars and conditions must be submitted to them for approval. When the conditions are returned approved by the commissioners, the reserve price which they require to be fixed for each lot is communicated to the trustees.

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(a).

The property is then offered for sale, and the commissioners, on being informed by the trustees that all or any of the lots have been sold for not less than the reserve price, make an order authorizing the trustees to complete the sale of each lot. If several lots are bought by one purchaser they are generally included in one order, unless the purchaser desires to have a separate order for each lot. Before making the orders, the commissioners require to see the original contracts, and to be supplied with copies for retention.

If the reserve price is not reached, and an offer to purchase for not less than the reserve price is subsequently made, the sale proceeds as by private contract.

The order usually directs that the purchase-money shall be paid by the trustees to the banking account of the official trustees of charitable funds at the Bank of England. The balance of the purchase-money is directed to be invested by the official trustees in $2\frac{1}{2}$ per Cent. Consolidated Stock, to be held in trust for the charity, subject to the further order of the Board, and dividends are directed to be remitted by the official trustees to the trustees for the time being of the charity, or any one or more of them, or any person or persons authorized by the trustees to receive the same.

Purchase-money.

If the legal estate is vested in the official trustee of charity lands, the order directs that he shall, if the purchaser requires, join in the conveyance.

Concurrence of official trustee.

The concurrence of the official trustee is unnecessary, because, under sect. 12 of the Charitable Trusts Act, 1869, *post*, a majority of the trustees are empowered to convey on behalf of all the trustees and of the official trustee of charity lands.

Unnecessary.

The official trustee does not enter into any covenants.

Official trustee does not covenant.

Where the title is derived under the Charit. Trusts Acts, an abstract, if delivered, must show that the requirements of the Acts have been complied with.

Abstract of title.

The conveyance need not be submitted for the approval of the commissioners except when the concurrence of the official trustee of charity lands is required. A form of conveyance when the official trustee joins will be found in Form No. 13, Charity Commission Forms, printed in App. II., *post*.

Conveyance when submitted to commissioners.

The Charity Commissioners not infrequently authorize a sale for the purpose of removing the site of a charitable institution in cases in which it is beneficial to the charity.

Removal of site.

Where the effect of a sale will be to effect a material change in the subsisting trusts of the charity, it is not made under the powers of the present section, but under the general power of establishing schemes conferred by sect. 2 of the Charit. Trusts Act, 1860, *post*, p. 558.

Where sale made by scheme.

Procedure in case of Exchange.

It has been stated (*ante*, p. 268) that orders for exchange are rarely made by the Charity Commissioners.

Order authorizing exchange.

When such an order is made, the commissioners require to be satisfied that the proposed exchange will be beneficial to the charity. A report of a

Sect. 24
(a). (b).

surveyor, with regard to the exchange, must be obtained and submitted to them, and also a certificate in writing under the hand of the solicitor of the charity trustees deposing to the sufficiency of the title of the land to be received in exchange.

Upon being satisfied on these points, the commissioners make an order authorizing the charity trustees within six months to carry the exchange into effect, and to do and execute all necessary acts and assurances.

Forms.

A form of application for an order authorizing an exchange will be found in App. II., Charity Commission Forms, No. 14, *post*. And as to the mode of application, see sect. 5 of the Charit. Trusts Act, 1869, *post*.

Investment.

(b) Power to re-invest in land is given by sect. 35 of Charit. Trusts Amend. Act, 1855, *post*. And the carrying into effect of all orders for investment is provided for by sect. 36 of the same Act, *post*. See also form of order stated in n. (a), *supra*.

Board may
authorize the
sale or
redemption
of rent-
charges (a).

25. The said Board shall have authority, upon such application as aforesaid, to authorize the sale to the owners of the land charged therewith of any rent-charge, annuity, or other periodical payment charged upon land and payable to or for the benefit of any charity, or applicable to charitable purposes, upon such terms and conditions as they may deem beneficial to the charity, and to give such directions for securing the due investment of the money arising from such sale for the benefit of the charity, or for securing the due application thereof to such charitable purposes as they may think fit (b); and in like manner the trustees of any charity, with the consent of the Board, may purchase any rent-charge or other yearly payment to which the charity estate is or shall be liable.

Power to
determine out
of what land
rent-charge
payable.

(a) Where a rent-charge in favour of charity does not exceed 10*l.*, the Board may determine out of what specific part of the land it is payable. Such specific part then remains solely charged, and the rest is exonerated: Charit. Trusts Amend. Act, 1855, s. 33, *post*.

Order for
redemption of
rent-charge
payable to
charity.

Orders for the redemption of rent-charges are made on the joint proposal of the charity trustees and the person out of whose land the rent-charge issues. The price for redemption is a sum of 2½ per Cent. Consolidated Stock sufficient in amount to produce an income equal to the rent-charge, which is transferred to the official trustees of charitable funds in trust for the charity. All arrears of the rent-charge are also required to be paid up to the date of the transfer.

The order is almost invariably carried out under the powers conferred by sect. 23, *ante*, and not under this section: see note (a) to that section. It recites the proposal and transfer, and states that the Board are satisfied that the redemption is fit and proper. It then proceeds to order that the transfer shall operate as a final and absolute redemption of the rent-charge, and as

a complete and effectual compromise and adjustment of all claims on behalf of the charity in respect thereof, and that the rent-charge shall cease and be extinguished, and that the order shall be a final bar to all actions and claims on behalf of the charity in respect of the rent-charge. The order then directs, in common form, that dividends shall be transmitted by the official trustees to the trustees of the charity for the time being, or one or more of them, or the person or persons for the time being authorized by the trustees to receive the same.

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(a), (b).

In the case of a purchase by the trustees of a rent-charge, as, for instance, tithe rent-charge, to which the charity property is liable, the Board require to be satisfied by the statement of the trustees that the proposed purchase is proper, and they require, also, a certificate by the trustees' solicitor of the sufficiency of the title of the persons claiming the rent-charge. The order then authorizes the trustees to carry out the purchase within six months, at the price named, and directions are, when necessary, given for providing the purchase-money.

Order for purchase of rent-charge.

(b) The mode in which investment is provided for will be apparent from the statement in the last note of an order for redemption of a rent-charge. See further, as to investment, sect. 36 of the Charit. Trusts Amend. Act, 1855 *post*.

Investment.

26. The leases (a), sales, exchanges (b), and other transactions authorized by such Board under the powers of this Act shall have the like effect and validity as if they had been authorized or directed by the express terms of the trust affecting the charity (c).

Leases, sales, &c. authorized by the Board to be valid.

(a) See sect. 21, *ante*.

(b) See sect. 24, *ante*.

(c) And they are valid notwithstanding disabling Acts: Charit. Trusts Amend. Act, 1855, s. 38, *post*.

27. Where any land shall be required for the erection or construction of any house or building with or without garden, play-ground, or other appurtenances, for the purposes of any charity, *and the trustees of the charity shall be legally authorized to purchase and hold such land* (b), but by reason of the disability of any person having an estate or interest in such land, or of any defect in title thereto, a valid and perfect assurance of the same land cannot be made to the trustees of the charity in the ordinary manner, it shall be lawful for the trustees of the charity, with the sanction of the said Board (such sanction to be certified under the hand of their secretary) (c), to take and purchase such land according to the provisions of "The Lands Clauses Consolidation Act,

Trustees of charities may purchase sites for building from owners under disability, &c., according to the provisions of 8 & 9 Vict. c. 18 (a).

Sect. 27. 1845 ;” and for that purpose all the clauses and provisions of the last-mentioned Act with respect to the purchase of lands by agreement, and with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making a title, and also with respect to conveyances of lands, so far as the same clauses and provisions respectively are applicable to the cases contemplated by this provision, shall be incorporated in this Act (*d*) ; and in all cases contemplated by this provision, the expression “ the special Act ” used in the said clauses and provisions of the said “ Lands Clauses Consolidation Act ” shall be construed to mean this Act ; and the expression “ the promoters of the undertaking,” used in the same clauses and provisions, shall be construed to mean the trustees of the charity in question.

Purchase of land.

(a) With regard to the application of charity funds in the purchase of land, see *ante*, pp. 278, 279.

Power of board to authorize purchase.
Scheme.

The Charit. Trusts Acts do not expressly empower the Charity Commissioners to make orders authorizing the purchase of land.

Provisions with regard to the purchase of land are, however, frequently inserted in schemes established under sect. 2 of the Charit. Trusts Act, 1860, *post*, p. 558.

Order merely authorizing purchase.

In addition to this, sect. 15 of the Charit. Trusts Act, 1860, is wide enough to authorize a simple order for the application of the charity funds to the purchase of land, where such purchase is beneficial to the charity. Such orders are indeed frequently made. A valuation and report as to the land proposed to be purchased is required to be made by a surveyor on behalf of the charity, and to be submitted to the commissioners, together with a certificate by the solicitors of the charity as to the sufficiency of the title.

Repeal.

(b) The words in *italics* are repealed by the Stat. Law Rev. Act, 1875 ; and by sect. 41 of the Charit. Trusts Amend. Act, 1855, incorporated trustees of any charity are empowered to purchase and hold lands for the purposes mentioned in this section without licence in mortmain.

(c) Or other officer of the board authorized to act on behalf of the secretary : Charit. Trusts Act, 1887, s. 3, *post*.

(d) These sections will be found in App. I., *post*.

In cases of charities the incomes whereof exceed 30*l.* per annum, the Master of the Rolls and Vice-Chan-

28. Where the appointment or removal of any trustee, or any other relief, order, or direction relating to any charity of which the gross annual income for the time being exceeds thirty pounds, shall be considered desirable, and such appointment, removal, or other relief,

order, or direction might now be made or given by the Court of Chancery, in respect either of its ordinary (b) or its special or statutory jurisdiction (c), or by the Lord Chancellor entrusted with the care and commitment of the custody of lunatics, it shall be lawful for any person authorized in this behalf by the order or certificate of the said Board (d), or for the Attorney-General, to make application (without any information, bill, or petition,) to the Master of the Rolls or one of the Vice-Chancellors (e) sitting at chambers, for such order, direction, or relief as the nature of the case may require; and the Master of the Rolls or the Vice-Chancellor (e) to whom any such application shall be made shall and may proceed upon and dispose of such application in chambers, save where he may think fit otherwise to direct, and shall and may have and exercise thereupon all such jurisdiction, power, and authority, and make such orders and give such directions in relation to the matter of such application, as might now be exercised, made, or given by the Court of Chancery or by the Lord Chancellor intrusted as aforesaid, in a suit regularly instituted, or upon petition, as the case may require; and the Master of the Rolls and Vice-Chancellors (e) respectively shall, in relation to such applications as aforesaid, and the proceedings thereon, (subject to any rules (f) which may be made by the Lord Chancellor, with the advice and consent of them or any two of them), have all such powers of directing matters to be heard in open court, and of ordering what matters shall be heard and investigated by themselves and their chief clerks respectively, and such other powers and authorities as by the Act of the last session of Parliament, chapter eighty (g), are vested in or authorized to be exercised by them at chambers, and the provisions of the said Act applicable to orders made by the Master of the Rolls or any of the Vice-Chancellors (e) at chambers shall extend to all orders so made under this Act: Provided always, that, save as may be otherwise provided by any rules to be made by the Lord Chancellor, with

Sect. 28.

cellors in chambers, shall have the same jurisdiction as the Court of Chancery or Lord Chancellor now has in a suit or upon petition, &c. (a).

15 & 16 Vict.
c. 80.

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such advice and consent as aforesaid, the determinations of the Master of the Rolls and Vice-Chancellors respectively upon and in relation to such applications as aforesaid shall not be subject to appeal in any case where the gross annual income of the charity does not exceed one hundred pounds (*h*): Provided also, that it shall be lawful for the Master of the Rolls or any Vice-Chancellor (*e*), where under the circumstances of any application as aforesaid he may so see fit, to direct that for obtaining the relief, order, or direction sought for by such application an information, bill, or petition, as the case may require, shall be filed or presented and prosecuted as now by law required, and to abstain from further proceeding on such application.

(*a*) As to proceedings in chambers, see *ante*, pp. 337, 338.

Extent of jurisdiction.

The jurisdiction under this section does not extend to trying titles or dealing with adverse claims: sect. 41 of this Act, *post*.

But the question whether property is held upon a charitable trust or not may be decided under it: *Re Norwich Town Close Estate Charity*, 40 Ch. D. 298.

The jurisdiction given to the judge at chambers is the same as that which could previously have been exercised in a suit regularly instituted or on petition: *Re Davenport's Charity*, 4 De G. M. & G. 839. For the orders which may be made at chambers, see *ante*, p. 338, and cases there cited.

Chancery Division.

This jurisdiction is now vested in the Chancery Division of the High Court of Justice: Jud. Act, 1873, ss. 16 and 34.

Restriction in case of City of London charities.

During the continuance of the power of making schemes under the City of London Parochial Charities Act, 1883, the powers given by this section cannot, so far as regards parochial charities of the City of London, be exercised without the consent of the Charity Commissioners: see sect. 40 of that Act, *post*.

End. Schools Acts.

A corresponding restriction is contained in sect. 6 of the End. Schools Act, 1874, the consent required in that case being that of the Committee of Council on Education.

Pendency of application under End. Schools Act, 1869, s. 32.

Where a summons had been taken out by the Attorney-General under this section for a scheme for the regulation of several old charitable endowments vested in various bodies of trustees, it was held that the mere fact that a scheme had been submitted by the trustees of four of the endowments to the End. Schools Commissioners under the End. Schools Act, 1869, s. 32, upon which no declaration had been made under sect. 30 of the same Act, was no objection to the Court making an order directing inquiries to be made as to the property of the charities and a scheme to be settled: *Re Charitable Gifts for Prisoners*, L. R. 8 Ch. 199.

Roman Catholic charities.

By the Roman Catholic Charities Act, 1860, s. 1, the jurisdiction conferred by this section is extended to apportioning Roman Catholic Charities,

partly applicable to superstitious uses, and to applying such part to lawful charitable trusts.

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(a)—(h).

(b) By information by the Attorney-General acting *ex officio*, or at the instance of a relator, or by bill, or by bill and information: see *ante*, p. 315. All these proceedings are now commenced by writ of summons, and are called actions: *ibid.*

Ordinary
jurisdiction.

(c) By petition under Romilly's Act (see *ante*, pp. 328 *et seq.*), and other Acts (*ante*, pp. 334—336).

Statutory
jurisdiction.

(d) Presumably no person can be authorized except one coming within sect. 43 of this Act, *post*, p. 507. As to the mode of application, see Charit. Trusts Act, 1869, s. 5, *post*.

(e) Now a judge of the Chancery Division of the High Court of Justice: Jud. Act, 1873, s. 34.

(f) As to the mode of procedure, see *ante*, pp. 338, 339.

(g) The Master in Chancery Abolition Act, 1852. This Act is superseded by R. S. C., 1883, Ord. LV., by which the Chamber jurisdiction is now regulated. The greater part of the Master in Chancery Abolition Act, 1852, has been repealed by the Stat. Law Rev. Acts, 1875, 1881 and 1883.

(h) With regard to appeals, see *ante*, p. 340, and *Re Charitable Gifts for Prisoners*, L. R. 8 Ch. 199, there referred to.

29. The jurisdiction created and given by this Act to the Master of the Rolls and the Vice-Chancellors sitting in chambers (a), upon any application to them respectively as aforesaid, shall extend concurrently to and may be exercised by the Chancellor of the Duchy and County Palatine of Lancaster, and the Vice-Chancellor of the same County Palatine respectively for the time being, as to every charity within the jurisdiction of the Court of Chancery of the said County Palatine whose gross annual income for the time being exceeds thirty pounds, upon application being made to such Chancellor or Vice-Chancellor respectively; and it shall be lawful for the Chancellor of the said Duchy and County Palatine, with the concurrence of the Vice-Chancellor of the same County Palatine, from time to time to make and issue any rules and orders for regulating the modes of proceeding, and the fees to be taken in respect of proceedings under this Act.

Provision as
to charities
within the
jurisdiction of
the Court of
Chancery of
the County
Palatine of
Lancaster.

(a) Sect. 28, *supra*.

30. Provided always, that the provisions of this Act applicable to any charity the gross annual income

Provisions as
to charities,
within the

Sect. 30. City of London, the incomes whereof do not exceed 30*l.* per annum. whereof exceeds thirty pounds shall extend to any charity established or administered or applicable to or for objects or purposes within the City of London the gross annual income whereof does not exceed thirty pounds, in like manner as if such income exceeded that amount (*a*).

(*a*) See the City of London Parochial Charities Act, 1882, *post*, by which special powers are conferred upon the Charity Commissioners to deal with these charities.

During the continuance of the powers of that Act, the Court cannot make schemes for or appoint trustees of these charities without the consent of the Charity Commissioners: see sect. 40 of that Act.

Lord Chancellor, with the advice of the Master of the Rolls and Vice-Chancellors, may make general orders, &c. (*a*).

31. It shall be lawful for the Lord Chancellor, with the advice and consent of the Master of the Rolls and Vice-Chancellors, or any two of them, to make and issue general rules and orders for regulating the mode and form of applications at the chambers of the Master of the Rolls and Vice-Chancellors respectively under this Act, and the proceedings thereon, and for determining in what cases and under what conditions and restrictions the determinations of the Master of the Rolls and Vice-Chancellors respectively upon or in relation to such applications shall be subject to appeal, and the fees and allowances to solicitors of the Court of Chancery, and the fees to be payable in money or by stamps to the officers of the said Court in respect of such applications and proceedings thereon; and such rules and orders may from time to time be varied by the like authority, and all such rules and orders shall be deemed general orders of the said Court.

(*a*) As to the procedure in Chambers, see *ante*, pp. 338—340.

County Courts to have jurisdiction in cases of charities the incomes whereof do not exceed 30*l.* per annum (*a*).

32. Where any charity, of which the gross annual income for the time being does not exceed thirty pounds (*a*) shall be established or administered or be applicable wholly or partially to or for objects or purposes within the district or any two or more of the

districts of any *District Court of Bankruptcy* or (b) of any County Court or Courts, holden under the Act of the Session holden in the ninth and tenth years of the reign of her Majesty, chapter ninety-five (d), and the appointment or removal of any trustee, or any other relief, order, or direction whatsoever concerning such charity, shall be considered desirable, and such appointment or removal, or other relief, order, or direction, might now be made or given by the Court of Chancery in respect either of its ordinary or its special or statutory jurisdiction (e), or by the Lord Chancellor entrusted with the care and commitment of the custody of lunatics, it shall be lawful for any person authorized in this behalf by the order or certificate of the said Board (f), or for the Attorney-General, to make application to such *District* or (c) County Court, or, as the case may be, to any one of such District or County Courts, for such order, direction, or relief as the nature of the case may require; and such *District* or (c) County Court shall entertain such application, and shall hear the matter in open Court, and shall give such relief, and make such orders and directions in relation to the matter of such application, as might now be made or given by the Court of Chancery or by the Lord Chancellor, entrusted as aforesaid, in a suit regularly instituted, or upon petition, as the case may require; and the clerk (g) of such County Court shall transmit a copy of such order or direction to the office in London of the Registrar of County Courts Judgments, to be there enrolled: Provided always, that no judge of any *District* or (c) County Court shall be authorized to vary any decree, order, or direction of the Court of Chancery, or of any judge thereof, or to make or give any order or direction inconsistent or conflicting with any such decree, order, or direction: Provided also, that where two or more *District* or (c) County Courts shall have concurrent jurisdiction with respect to any charity under this Act, no application in respect of such charity shall be made

Sect. 32. to or entertained by more than one of such *District* or (c) County Courts at the same time.

Limit of jurisdiction increased.

(a) The limit of jurisdiction is increased, by the Charit. Trusts Act, 1860, s. 11, to 50*l*.

The certificate of the Charity Commissioners is evidence of the amount of the income of the charity: sect. 44 of this Act, *post*; and see County Court Rules, 1889, Ord. XLVIII. r. 18.

See further, as to County Courts, sects. 35—40 of this Act, and *ante*, pp. 343, 344.

City of London parochial charities.

A temporary restriction on the exercise of jurisdiction without the consent of the commissioners is imposed by the City of London Parochial Charities Act, 1883, s. 40, *post*.

End. Schools Acts.

A corresponding restriction is contained in sect. 6 of the Endowed Schools Act, 1874, the consent required being that of the Committee of Council on Education.

(b) District Courts of Bankruptcy were abolished by the Bankruptcy Act, 1869, s. 130; and by the Stat. Law Rev. Act, 1875, the present Act was repealed so far as relates to District Courts of Bankruptcy.

(c) The words in italics were repealed by the Stat. Law Rev. Act, 1875: see note (b), *supra*.

(d) Now the County Courts Act, 1888, 51 & 52 Vict. c. 43.

(e) See notes (b) and (c) to sect 28 of this Act, *ante*.

(f) Presumably this could only be a person authorized to apply under sect. 43 of this Act, *post*.

(g) Now "the registrar." See County Court Rules, 1889, Ord. XLVIII. r. 1.

Deputy sitting for County Court judge not to exercise jurisdiction.

33. *The jurisdiction hereby created and conferred on the County Courts with respect to any charity shall not be exercised by any deputy or other person who may for the time being be appointed to sit and shall be sitting for any such judge (a).*

(a) Repealed by the Stat. Law Rev. Act, 1875, the County Courts Act, 1867 (30 & 31 Vict. c. 142), having enacted (sect. 20) that the deputy of a County Court judge shall have all the powers of his principal. The County Courts Act, 1888 (51 & 52 Vict. c. 43), contains a similar provision (sect. 18).

Where two or more Courts have concurrent jurisdiction, Board to direct to which Court applications shall be made.

34. Where two or more *District Courts of Bankruptcy* or (a) County Courts shall concurrently have jurisdiction under this Act (b) with respect to any charity, it shall be lawful for the said Board to order to which of such Courts any application with respect to such charity shall be made; and every such order shall be conclusive as to

the jurisdiction with respect to the application referred Sect. 34.
to in such order.

(a) The words in italics were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

(b) See sect. 32, *ante*.

35. It shall be lawful for the said Board to direct that any application as to any charity within the jurisdiction of any *District Court of Bankruptcy* or (a) County Court shall be made before a judge of the Court of Chancery (b), or as to any charity within the jurisdiction of the Court of Chancery of the County Palatine of Lancaster, either before the Chancellor or the Vice-Chancellor of the same County Palatine, or before a judge of the High Court of Chancery (b), according to the provisions herein contained applicable to a charity the gross annual income whereof exceeds thirty pounds (c), and in such case such application shall be made and may be heard and determined accordingly, in like manner as if the gross annual income of such charity exceeded thirty pounds; and upon the production of the order or certificate containing such direction, or of a copy thereof, the application with respect to which such order or certificate shall have been made shall not be entertained or proceeded with by such *District or (a) County Court*.

Board may direct applications within the jurisdiction of a County Court to be made before a judge of the Court of Chancery, &c.

(a) The words in italics were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

(b) Now the Chancery Division: Jud. Act, 1873, s. 34, sub-s. (2).

(c) See sect. 28 of this Act, *ante*.

36. Whenever any order or decision is made by any *District Court of Bankruptcy* or (a) County Court for the appointment or removal of any trustee of any charity, or approving of any scheme for regulating or directing the administration of any charity, or the estate, funds, property, or income thereof, a copy of every such order or decision shall immediately upon

Orders of County Court for the appointment or removal of trustees, or approving of a scheme to be transmitted to the Board, and not to be valid until approved by them.

Sect. 36. the making thereof be delivered or transmitted *by the deputy registrar of such District Court or (a) by the clerk of the County Court (b), as the case may be (a),* together with all requisite particulars, to the said Board, for the purpose of being considered by them; and no such order or decision shall be valid or effectual until the same shall have been approved by the said Board, such approval to be testified by a certificate in writing, signed by the secretary (c) of the said Board, and no such approval shall issue from the said Board until one calendar month shall have elapsed after the receipt by the Board of such copy and particulars.

(a) The words in italics were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

(b) Now "the registrar:" see County Court Rules, 1889, Ord. XLVIII. r. 1.

(c) Or any officer authorized by order of the Board to act on behalf of the secretary: Charit. Trusts Act, 1887, s. 3, *post*.

Board, if dissatisfied with the order of the County Court, may remit the same for reconsideration, or may transfer the matter to a judge of the Court of Chancery, &c.

37. In case any such order or decision as last aforesaid of any *District Court of Bankruptcy or (a) County Court* shall not be approved by the said Board, it shall be lawful for such Board to remit the same for reconsideration and decision by such *District or (a) County Court*, with such remarks and recommendations thereon (if any) as shall seem fit and expedient to such Board, or, in the discretion of the Board, to order and direct that the subject-matter to which such order or decision relates, together with such order or decision, shall be submitted to the consideration and decision of a judge of the Court of Chancery (b), and in such last-mentioned case no further proceedings shall be had or taken in the *District or (a) County Court* with respect to the matter in question; and in case the order or decision of the *District or (a) County Court*, on the reconsideration of any order or decision so remitted for reconsideration, be disapproved as aforesaid by the said Board, such Board shall refer such orders and decisions, and the subject-matter thereof, to a judge of the Court of Chancery (b),

or, as to any charity within the jurisdiction of the Court of Chancery of the County Palatine of Lancaster, either to the Chancellor or the Vice-Chancellor of the same County Palatine, or to a judge of the High Court of Chancery^(b); and where any order or decision is referred to a judge of the Court of Chancery, or of the Court of Chancery of the said County Palatine of Lancaster, under this provision, such judge shall have and exercise all such jurisdiction, power, and authority in relation thereto as in the case of a charity the gross annual income whereof exceeds thirty pounds^(c), and may make such order in relation to the matter of such order or decision as to him may seem proper.

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(a) The words in italics were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

(b) Now the Chancery Division: Jud. Act, 1873, s. 34, sub-s. (2).

(c) See sect. 28 of this Act, *ante*.

38. Subject to any orders to be made by the Lord Chancellor as hereinafter mentioned^(b), and to the other provisions of this Act, all proceedings to be taken in any *District Court of Bankruptcy* or^(a) County Court, and all orders and directions to be made or given by any such *District Court* or^(a) County Court by virtue of the jurisdiction hereby created and conferred on such Court, shall respectively be subject to the same rules and regulations, and have the same effect, and be registered, enforced, and executed in the same manner, as the other proceedings, orders, judgments, and directions of the same Court under its ordinary jurisdiction, and it shall be lawful *for any such District Court, or*^(a) for any County Court, with the consent of the Board^(c), to rescind or vary any order which shall have been previously made by such Court, without prejudice to any act or matter in the meantime done under such order; and for executing and putting in force any order to be made by any County Court under this Act, every judge of any such Court shall and may have and exercise all

Proceedings
in County
Courts under
this Act.

Sect. 38: such powers as by the Act of the session holden in the ninth and tenth years of her Majesty, chapter ninety-five (*d*), are given for enforcing the payment of any debt, damages, or costs under the said Act.

9 & 10 Vict.
c. 95.

(a) The words in italics were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

(b) Sect. 45 of this Act, *post*.

(c) The Charity Commissioners sitting as a board under this Act: sect. 66, of this Act, *post*.

(d) Now sects. 146—163 of the County Courts Act, 1888 (51 & 52 Vict. c. 43).

Appeal from
order of
County Court.

39. Where any person authorized to make any application under this Act (*a*), (other than her Majesty's Attorney-General acting *ex officio*,) or any other person who may have been made a party to any proceeding upon any application under this Act, is aggrieved by or dissatisfied with any order made by any *District Court of Bankruptcy* or (*b*) County Court upon any such application, or any proceeding thereon, he may, within one calendar month after the making of such order, give notice in writing to the said Court, and also to the said Board, that he is desirous to appeal against the same; and if the said Board think it reasonable and proper that such appeal should be entertained, and give a certificate to that effect, such *District* or (*b*) County Court shall suspend any proceedings upon the order appealed against during such time as the circumstances may require; and the said Board, if they so think fit, may require the person giving any such notice of appeal to become bound with two sufficient sureties (*c*), to be approved by the deputy registrar of such *District Court*, or (*b*) by the clerk (*d*) of the County Court, as the case may be (*a*), to the treasurers of the said Courts respectively, or such other person as the said Board may see fit, in such sum as to the said Board shall seem reasonable, to pay such costs of the proceedings on the appeal as shall be ordered to be paid by such appellant, and also (if the said Board so think fit) to indemnify the charity against the costs and expenses of

Sect. 39.

or attending such appeal; and every bond executed under this provision shall be exempt from stamp duty: Provided always, that it shall be lawful for her Majesty's Attorney-General (acting *ex officio*), at any time within three calendar months after the making of any order *by a District Court or (b) County Court* under this Act, to lodge and commence and prosecute an appeal against such order, without giving any such notice or becoming bound as aforesaid, and every such last-mentioned appeal shall thereupon be allowed by the order of such *District or (b) County Court*, and shall have such other effect as any other appeal under this Act.

(a) See sect. 43, *post*. For an instance of an appeal from an order of a County Court, see *Re Donington Church Estate*, 6 Jur. N. S. 290.

(b) The words in italics were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

(c) The appellant must give notice to the registrar of his proposed sureties. For form of notice and of bond, see County Court Rules, 1889, Form 346.

(d) Now the registrar: County Court Rules, 1889, Ord. XLVIII. r. 1.

40. Where any order allowing an appeal (a) has been made as aforesaid, the person thereby allowed to appeal shall within three calendar months present a petition to the Court of Chancery (b), setting forth the order appealed against, and the order allowing such appeal, and praying such relief as the case may require; and upon the hearing of such petition the Court may confirm, vary, or reverse the order appealed against, or may remit such order to the *District Court of Bankruptcy or (c) County Court* by which the same was made, with or without any declaration or directions of the Court of Chancery in relation thereto, or may proceed in relation to the charity to which such order relates as in the case of an application under this Act to a judge of the Court of Chancery at chambers, and any judge of such Court sitting at chambers or in open Court may make or give any such orders or directions in relation to the matter of such order as he may see fit, or the Court may make such other order in relation to the matter of any such

Proceedings
on appeal.

Sect. 40. appeal as to the Court may seem just, and as might be made in the case of a suit regularly instituted, or a petition, as the case may require; and in case the party allowed to appeal do not within such three calendar months present such petition of appeal, the order against which such appeal was allowed shall be final; and in case any costs adjudged on any such appeal to be paid by the party allowed to appeal be not paid, such bond as aforesaid may be put in suit, and the money to be recovered on every such bond shall be applied to indemnify the charity estate or the person damnified, or otherwise in such manner as the justice of the case may require, and the Court or judge by whom such appeal may have been heard shall think fit.

To what
Court appeal
lies.

(a) The order here referred to is the certificate of the Charity Commissioners under sect. 39, *ante*.

(b) In Dan. C. P. 6th ed. p. 2053, n. (gg), it is said that the appeal was formerly to a judge of the Court of Chancery, but that the jurisdiction would seem to be now assigned to a judge of the Chancery Division of the High Court.

This statement seems to be incorrect. Sect. 45 of the Jud. Act, 1873, provides that appeals from inferior Courts are to be determined by a Divisional Court; and sect. 34, sub-sect. (2), of the same Act expressly excepts appeals from County Courts from the business transferred to the Chancery Division.

The appeal to the Divisional Court is by notice of motion: R. S. C. 1883, Ord. LIX. r. 10. It would be difficult to reconcile some of the rules of that order with this and the last section.

The County Court jurisdiction in charity cases is, however, now never made use of.

(c) The words in italics were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

No Chancery
judge, or
County Court,
in proceed-
ings under
this Act, shall
try titles to
property, &c.

41. Provided always, that no judge of the Court of Chancery (a), nor any *District Court of Bankruptcy* or (b) County Court (c), shall upon any proceedings under this Act have jurisdiction to try or determine the title at law or in equity to any real or personal property, or any term or interest therein, as between any charity, or the trustee thereof, and any person holding or claiming such real or personal property, term, or interest adversely (d) to such charity, or to try or determine any

question as to the existence or extent of any charge or trust *(e)*. Sect. 41.

(a) See sect. 28, *ante*.

(b) The words in italics were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

(c) See sect. 32, *ante*.

(d) As to what is meant by claiming adversely to a charity, see note (a) to sect. 15, *ante*, p. 474, and note (g) to sect. 17, *ante*, p. 482.

(e) See *Christie v. Sandberg*, W. N. 1880, 159, where an action by the managers of a school against a curate to recover money collected by him for the purposes of the school was held not to come within these words.

42. Before any application shall be made to any judge of the Court of Chancery *(a)*, or to any *District Court of Bankruptcy* or *(b)* County Court *(c)*, under any of the provisions herein contained for the establishment or alteration of a scheme or the appointment or removal of any trustees or trustee, notice in writing of such intended application shall be given in such form and manner as the said Board shall have directed *(d)*; and if the order be that such notice be affixed to or near the door of any parish or district church, the incumbent and churchwardens of such parish or district are hereby respectively required to allow such notice to be affixed and to remain so affixed during such period, not less than fifteen days, as the said Board shall have ordered; and in any case in which the order shall be that such notice shall be affixed to any place, evidence that the same has been so affixed shall be deemed and taken as *prima facie* evidence that it has remained affixed during the period prescribed by the Board.

Notice to be given of applications for establishment, &c. of schemes, or for appointment or removal of trustees under this Act.

(a) See sect. 28 of this Act, *ante*.

(b) The words in italics were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

(c) See sect. 32 of this Act, *ante*.

(d) See n. (c) to sect. 6 of the Charit. Trusts Act, 1860, *post*.

43. Every application to any judge or Court under the jurisdiction created or conferred by any of the pro- By whom applications may be made.

Sect. 43. visions of this Act (*a*), may be made by her Majesty's Attorney-General, or, subject to the provisions aforesaid, by all or any one or more of the trustees or persons administering or claiming to administer, or interested in (*b*), the charity which shall be the subject of such application, or any two or more inhabitants of any parish or place within which the charity is administered or applicable; and it shall be lawful for her Majesty's Attorney-General for the time being, acting *ex officio*, to make application by petition to the Court of Chancery (*c*) with respect to any charity under the provisions of the Act passed in the fifty-second year of King George the Third, chapter one hundred and one (*d*), or under the provisions of any Act or Acts passed (*e*) or to be passed authorizing the application to the same Court by petition according to the provisions of the said Act.

Attorney-General may petition under 52 Geo. III. c. 101, &c.

(*a*) See sects. 28, 29 and 32, *ante*. Sects. 28 and 32 provide that any person authorized by the Charity Commissioners may apply to the Courts as in such sections mentioned. The effect of the present section seems to be that that authority can only be given to such persons as are here mentioned.

(*b*) By sect. 78 of the Elem. Educ. Act, 1870 (33 & 34 Vict. c. 75), the Education Department are, for the purposes of the Charit. Trusts Acts, 1853 to 1869, deemed to be persons interested in any elementary school to which those Acts are applicable and the endowment thereof.

(*c*) Now the Chancery Division: Jud. Act, 1873, ss. 16, 34, 76.

(*d*) Sir Samuel Romilly's Act: see *ante*, pp. 328 *et seq.*

(*e*) See *ante*, pp. 334 *et seq.*

Board to declare the annual incomes of charities for determining the jurisdiction under this Act.

44. For the purposes of determining the jurisdiction under this Act with respect to any charity (*a*), or the right to appeal from the determination of a judge of the Court of Chancery (*b*), it shall be lawful for the said Board to declare, according to such judgment as they may be able to form upon the returns or statements before them in relation to any charity, whether the gross annual income for the time being of such charity does or does not exceed thirty pounds or one hundred pounds, (as the case may require), and a statement in any certificate or order of the said Board that according to such judgment as aforesaid the gross yearly income

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of any charity does or does not exceed thirty pounds or one hundred pounds shall be sufficient evidence of the amount of the gross annual income of such charity, for the purpose of determining such jurisdiction or right to appeal as aforesaid; and any certificate or order made by the said Board under this Act, authorizing any proceeding or application concerning any charity to be taken or made to any *District Court of Bankruptcy* or (c) County Court or to the Court of Chancery or any judge thereof, shall state that the gross annual income for the time being of such charity does not exceed thirty pounds (d), or does exceed thirty pounds (as the case may be): Provided always, that where any charity, or the trustees thereof, in addition to the principal endowment for its general objects and purposes, shall be possessed of or entitled to any other endowment (e) for any particular or special object or purpose arising out of or in its nature or application connected with the general objects or purposes of such charity, it shall be lawful for the said Board, having regard to the circumstances of each such case, and to the object and extent of the proposed application and litigation, to determine whether such endowment for such particular or special object or purpose should, for the purposes of jurisdiction and proceedings under this Act, be considered and treated as forming part of the general endowment (e) of the charity, or as a separate or independent charity, and such Board shall frame their certificate or order accordingly.

(a) See sects. 28 and 32, *ante*.

(b) See sect. 28, *ante*, and R. S. C. 1883, Ord. LV. r. 14, *ante*, p. 340.

(c) The words in italics are repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

(d) Now 50*l.*, see n. (a) to sect. 32, *ante*; and see sect. 11 of the Charit. Trusts Amend. Act, 1855, *post*.

(e) "Endowment" is defined by sect. 66 of this Act, *post*.

45. The Lord Chancellor shall make such orders for regulating proceedings by and before the judges of

Lord Chancellor to make orders for

Sect. 45. *District Courts of Bankruptcy and* (a) County Courts regulating proceedings before County Courts, &c. under this Act, and for fixing and determining the fees to be taken in respect of such proceedings, as he may see fit; and, subject to such orders, such judges may regulate the proceedings before them respectively so as to render them as summary and inexpensive as conveniently may be.

(a) The words in italics were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

The orders now in force are the County Court Rules, 1889, of which Ord. XLVIII. relates to charities.

Saving of subsisting rights of the Church of England and members thereof with respect to charities (a).

46. Nothing herein contained shall diminish or detract from any right or privilege which by any rule or practice of the Court of Chancery, or by the construction of law, now subsists for the preference or the exclusive or special benefit of the Church of England, or the members of the same church, in settling any scheme for the regulation of any charity, or in the appointment or removal of trustees, or generally in the application or management of any charity.

(a) See generally, as to religious charities, *ante*, pp. 117 *et seq.* And as to the regard paid to religious belief in the appointment of trustees, see *ante*, pp. 192, 193. Cf. also, sect. 4 of the Charit. Trusts Act, 1860, *post*.

This section would prevent persons not members of the Church of England from being appointed trustees of a Church of England school: *Re Burnham National Schools*, L. R. 17 Eq. at p. 247.

Secretary of Board to be the treasurer of public charities; and such treasurer to be a corporation.

47. The secretary for the time being of the said Board shall by virtue of his appointment be the treasurer of public charities (a); and such treasurer shall, for the purposes of taking, holding, conveying, assigning, transferring, and transmitting real property, including leaseholds for lives or years, be a corporation sole by the name of "The Treasurer of Public Charities," and by that name shall have perpetual succession, and plead and be impleaded before all Courts, justices, and others.

Official trustee of charity lands.

(a) Now the official trustee of charity lands: Charit. Trusts Amend. Act, 1855, s. 15, *post*.

Land held upon trust for

48. Where any land, or any term or estate therein,

holden upon trust for any charity, shall be vested in any persons other than the persons acting in the administration and application of the rents; or where there shall be no trustees thereof, or the trustees, or any of them, shall be unwilling to act, or it shall be uncertain in whom such land, term or estate, shall be vested, or all or any of the persons in whom such land, term or estate shall be vested, cannot be found, or shall be under age, lunatic, or of unsound mind (whether found such by inquisition or not), or otherwise incapable of acting, or shall be out of the jurisdiction or not amenable to the process of the Court of Chancery, or where by reason of the reduced number of trustees or other causes a valid appointment of new trustees cannot be made, or where by reason of the expenses incident to the appointment of new trustees, and the conveyance or assignment of such land, term, or estate, to such new trustees, it shall appear to the Court of Chancery (*b*), or to any judge of such Court or of any Court having jurisdiction with respect to such charity under this Act (*c*), desirable so to do, such Court or judge may order that such land, term or estate be vested in such treasurer, and thereupon the same shall vest in such treasurer and his successors for all the estate and interest holden in trust for the charity as aforesaid, without any conveyance or assurance thereof; but no such vesting order as aforesaid shall be made in respect of any land, or term or estate as aforesaid, holden in trust as aforesaid, vested in a corporation, without the consent of the corporation (*d*); and no such vesting order shall take effect in respect of any copyhold land without the consent of the lord of the manor; and the Court of Chancery, or such judge, may direct such periodical or other payment, as such Court or judge may think fit, to be made to the lord of the manor, in compensation for fines or other profits which would have become due upon death or admittance of tenants.

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a charity,
may in cer-
tain cases be
vested in the
treasurer (*a*).

(*a*) Now the official trustee of charity lands: Charit. Trusts Amend. Act, 1855, s. 15, *post*.

Sect. 48**(a)–(d).****Rent-charge.****Official trustee bare trustee.****Advantage of vesting land in official trustee.****Jurisdiction vested in Charity Commissioners.****City of London parochial charities. Chancery Division.****Church-wardens and overseers.****Land may be re-vested in the trustees of the charity (a).**

A rent-charge, being "land" within the definition in sect. 66 of this Act, may be vested in the official trustee.

The official trustee holds land vested in him as a bare trustee: sect. 50 of this Act, *post*. And land vested in him may be re-vested in the charity trustees: sect. 49 of this Act, *post*.

The official trustee may be directed to convey land vested in him: Charit. Trusts Amend. Act, 1855, s. 37, *post*; and as to his concurrence in conveyances, see *ante*, p. 491.

If the official trustee is made a party to any legal proceedings, he requires to be indemnified against costs.

The benefits derivable from the constitution of the official trustee of charity lands are the simplification of title to charity property, and the saving of the heavy and recurring expense of conveyances on each appointment of trustees. So little is the ordinary administration of a charity varied by the circumstance that its real estate is vested in the official trustee, that it is only in the two cases, either of a sale or of the institution of legal proceedings in respect of land so vested, that the trustees become practically aware of the fact. It cannot, therefore, be said that the vesting of charity land in the official trustee has the effect of diminishing the legitimate authority of the trustees of the charity: see the Twenty-ninth Report of the Charity Commissioners, App., p. 24, n.

The jurisdiction conferred by this section is now exerciseable by the Charity Commissioners: Charit. Trusts Act, 1860, s. 2, *post*; and see Charit. Trusts Act, 1887, s. 5, *post*.

Schemes under the City of London Parochial Charities Act, 1883, s. 12, *post*, must provide for the vesting of charity lands in the official trustee.

(b) This jurisdiction is now transferred to the High Court of Justice (Jud. Act, 1873, s. 16), and applications under this section come within the matters assigned to the Chancery Division: *ibid.*, sect. 34, sub-s. (2); see *Att.-Gen. v. Langham*, 82 L. T. p. 246.

(c) See sect. 32, *ante*.

(d) Where charity lands are vested in the churchwardens and overseers of a parish as a corporation under 59 Geo. III. c. 12, s. 17, the legal estate cannot be transferred from them and vested in the official trustee of charity lands without their consent: *Re Hackney Charities*, 34 L. J. Ch. 169. This section, and the decisions as to when lands become vested under it in the churchwardens and overseers, will be found *ante*, pp. 238 *et seq.*

49. It shall be lawful for any Court or judge by whom respectively any such vesting order may have been made, or for any other Court or judge having jurisdiction in the matter, if it shall so seem fit to such Court or judge, from time to time to order that all or any part of the land, term or estate, which shall for the time being be vested in the said treasurer (b) by virtue of any such vesting order as aforesaid, shall be divested, and that the same shall be vested in the acting trustees or trustee for the time being of the charity; and

such last-mentioned order shall operate to vest such land, term and estate, in the trustees or trustee therein named without any conveyance or assurance. Sect. 49.

(a) These orders may now be made by the Charity Commissioners: Charit. Trusts Act, 1860, s. 2, *post*. See, also, Charit. Trusts Amend. Act, 1855, s. 37, *post*.

(b) Now "official trustee of charity lands": Charit. Trusts Amend. Act, 1855, s. 15, *post*.

50. Subject to the orders and directions of the Court of Chancery (b) or of any such judge, such treasurer (a) shall be deemed a bare trustee, and shall permit the persons acting in the administration of the charity to have the possession, management, and control of the trust estates, and the application of the income thereof, as if the same had been vested in them. Treasurer (a) to be a bare trustee, &c.

(a) Now "official trustee of charity lands": Charit. Trusts Amend. Act, 1855, s. 15, *post*. See, also, sect. 16 of the Charit. Trusts Amend. Act, 1860, *post*; and sect. 12 of the Charit. Trusts Act, 1869, *post*.

(b) Now the Chancery Division, to which the jurisdiction is assigned: Jud. Act, 1873, s. 34, sub-s. (2).

It seems doubtful whether there is jurisdiction under this section to make an order giving to the official trustee of charity lands any active duties beyond such (if any) as may be necessary for the purpose of, or incidental to, vesting the property in him. The words "orders and directions of the Court of Chancery or of any such judge," must, it is conceived, be read in connection with sect. 48. If so, they refer merely to vesting orders made under that section, and the two sections together mean that, subject to any incidental direction given in or for the purpose of a vesting order, the official trustee is a bare trustee. In that case the possession and control of the trust estates could not be taken from the trustees of the charity and vested in the official trustee; nor could the powers and duties of such trustees be circumscribed. Transfer of active duties to official trustee.

Whether this view be right or not, at all events the Charity Commissioners cannot make an order having the effect of taking all or any of the duties of the trust away from the charity trustees and vesting them in the official trustee. The jurisdiction transferred to the commissioners by sect. 2 of the Charit. Trusts Act, 1860, includes the power to make orders "for or relating to the assurance, transfer, payment, or vesting, of any real or personal estate." Orders of the kind in question do not come within these words.

51. *The secretary for the time being of the said Board, and such other public officer or officers as the Lord Chancellor* Secretary, &c., shall be Official

Sect. 51.

Trustees of Charitable Funds; and stock, &c., held in trust for a charity may be transferred to them (a).

shall appoint, shall be Official Trustees of Charitable Funds, and (b) where trustees or other persons having in their names, or in the name of any deceased person of whom they are representatives, in the books of the Bank of England, or of the East India or South Sea Company, or of any other public company, any annuities, stock, or shares, or holding any government or parliamentary or other securities in trust for any charity, shall be desirous to transfer or deposit the same to or with the said official trustees in trust for such charity, or where any persons shall be desirous of transferring or depositing as aforesaid any annuities, stocks, shares, or securities for discharging any legacy or charge given or made to or for the benefit of any charity, or where it shall appear to the Court of Chancery, or to any judge of such Court, or of any District Court of Bankruptcy, or (c) County Court having jurisdiction under this Act, that any annuities, stock, shares, or securities held in trust for any charity ought, for the purpose of security or convenient administration, to be transferred or deposited as aforesaid, it shall be lawful for such Court or judge to order the transfer or deposit of such annuities, stock, shares, or securities to or with such official trustees.

Official trustees of charitable funds.

(a) As to the constitution of the official trustees of charitable funds, see Charit. Trusts Amend. Act, 1855, s. 13, *post*, and Charit. Trusts Act, 1887, s. 4, sub-s. (1), *post*.

As to the investment and disposal of money received by them, see Charit. Trusts Amend. Act, 1855, ss. 23, 24, and 28, *post*; and as to the conduct of business by them generally, see sects. 21 and 22 of the same Act, and Charit. Trusts Act, 1887, s. 4, sub-s. (2), *post*.

With regard to transfers and payments to and by the official trustees, see Charit. Trusts Amend. Act, 1855, ss. 12 and 25, *post*; Charit. Trusts Act, 1860, s. 12, *post*; Charit. Trusts Act, 1887, s. 4, sub-s. (2) (b), *post*.

Effect of vesting in official trustees.

The agency of the official trustees of charitable funds effects two purposes. It secures the safety of the capital of the charity funds, and it relieves the charities from all expense and delay in obtaining payment of income when due.

But the administration of the income of a charity the funds of which are vested in the official trustees is in no respect more completely under the control of the Charity Commissioners than is that of any other charity. The official trustees have neither the means nor the power to interfere with the administration of the income, or in the management of any charities.

Their duty in respect of income is confined (see sect. 52, *infra*) to remitting (free of charge), as they become due, the dividends and income of the funds standing in their names to the trustees of the charity: see Twenty-ninth Report of the Charity Commissioners, App., p. 23, n. The position and the effect of vesting in the official trustees are stated in a memorandum prepared by the Charity Commissioners, which is printed among the Charity Commission Forms in App. II., *post*, Form No. 17.

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(a), (b), (c).

Orders for transfers and payments to and by the official trustees of charitable funds may be made by the Charity Commissioners: Charit. Trusts Act, 1860, s. 2, *post*.

Jurisdiction of Charity Commissioners.

Schemes under the City of London Parochial Charities Act, 1883 (see sect. 12, *post*), must provide for the vesting in the official trustees of charitable funds of all personal property belonging to the charity.

City of London parochial charities.

(b) The words in italics are repealed by sect. 6 of the Charit. Trusts Act, 1887, *post*.

(c) These words were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

52. *The secretary of the said Board shall keep separate accounts of the annuities, stock, shares, and securities belonging to each separate charity, and (a) the said official trustees shall pay the dividends or interest or income thereof to the trustees or persons acting in the administration of such charity, or otherwise dispose thereof, and transfer such annuities, stock, shares, or securities (when occasion shall require), as the Court of Chancery (b), or any judge of such Court, or of any District Court of Bankruptcy, or (c) County Court having jurisdiction under this Act, or other lawful authority (d), shall direct.*

Secretary to keep separate accounts of the stock, &c. of each charity, &c.

(a) The words in italics are repealed by s. 6 of the Charit. Trusts Act, 1887, *post*.

The conduct of the business of the official trustees is now governed by Treasury Regulations under sect. 4, sub-s. (2) of the Charit. Trusts Act, 1887, *post*. The Regulations will be found in App. II. to this Book.

(b) Now the Chancery Division: Jud. Act, 1873, s. 34, sub-s. (2).

(c) These words are repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

(d) This jurisdiction is now exerciseable by the Charity Commissioners: Charit. Trusts Act, 1860, s. 2, *post*.

53. It shall be lawful for any trustees or other persons having the custody of any deeds or muniments of or relating to such charity to deposit the same for security in a repository which may be provided by the

Deeds of charities may be deposited in a repository provided by the Board.

Sect. 53. said Board, subject to any regulations to be made by the said Board under this Act (*a*).

(*a*) By sect. 19 of the Charit. Trusts Act, 1860, the Board may require the transmission of documents belonging to charities, and retain them in the repository mentioned in this section.

Board may provisionally approve and certify schemes which cannot be carried into effect except by authority of Parliament (*a*)

54. Where upon the application (*b*) of any trustees or other persons concerned in the management or administration of any charity, or interested in the benefits thereof (and after such examination or inquiry as the Board may think necessary in relation thereto), or upon any report of an inspector (*c*), or information otherwise obtained by the said Board under this Act, with relation to any charity, it shall appear to the said Board to be desirable to have a new scheme for the application or management of the charity, and such new scheme as contemplated or considered desirable by the Board cannot be, or it shall in the opinion of the Board be doubtful whether it can be carried into complete effect by the Court of Chancery (*d*), or by any *District or* (*e*) County Court under the jurisdiction created by this Act, or otherwise than by the authority of Parliament, it shall be lawful for the said Board in every such case provisionally to approve and certify such new scheme in the manner and subject to the regulations hereinafter mentioned.

(*a*) Sects. 54 to 60 of this Act, which relate to the making of schemes requiring the authority of Parliament, have fallen into disuse in consequence of the extreme difficulty which has been experienced in obtaining the necessary Act: see *ante*, p. 450.

(*b*) As to the mode of application, see Charit. Trusts Act, 1860, s. 4, and Charit. Trusts Act, 1869, s. 5, *post*.

(*c*) Now "assistant commissioner:" see Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

(*d*) See *ante*, pp. 89—91 and 231.

(*e*) The words in italics were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

Notice before provisional approval of scheme.

55. One month at least before any such new scheme shall be so provisionally approved, notice thereof shall be

given in such manner as the Board may in each case consider proper or expedient for ensuring due publicity, and every such notice shall contain such particulars of the proposed scheme as the said Board think fit, and as shall be deemed by the said Board sufficient to show the nature of such scheme, and where the nature thereof cannot conveniently be shown in the said notice, such notice shall refer to some convenient place within the parish or district, and to the office in London of the Registrar of County Courts Judgments (*a*), where a copy of the proposed scheme shall be deposited and may be inspected, and every such notice shall require any objections to such scheme to be stated or transmitted to the said Board or their secretary (*b*) within one month from the time when the notice shall have been given. Sect. 55.

(*a*) Now the office of the Board : Charit. Trusts Amend. Act, 1855, s. 43, *post*.

(*b*) Or any officer of the Board authorized to act on behalf of the secretary : Charit. Trusts Act, 1887, s. 3, *post*.

56. If after such notice as aforesaid any objections or suggestions shall be made, the Board shall consider the same, and may thereupon, if to them it shall seem fit, alter or modify the scheme according to any such objections or suggestions; and after all such objections and suggestions, if any, have been disposed of, or if no such objections or suggestions shall have been made, the Board, in case they shall not think fit to refer such scheme to an inspector (*a*) under the provision next hereinafter contained, may proceed to approve such scheme, and to certify the same in manner hereinafter mentioned. Board shall consider objections, &c., and may afterwards approve scheme.

(*a*) Now "assistant commissioner": see Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

57. Upon the requisition of any person interested in the charity in question (in case the said Board after due consideration shall be of opinion that there are sufficient The matter of the scheme may be referred to an inspector for local inquiry.

Sect. 57. grounds for complying with such requisition), or in any other case, if the said Board shall consider it desirable, the matter of any scheme in question may be referred by the said Board to one of their inspectors(*a*), and such inspector(*a*) shall thereupon proceed to make a local inquiry and examination into the matter of the scheme in question, and for the purposes of such inquiry, such inspector(*a*) may hold a sitting or sittings in some convenient place in the parish or one of the parishes or the district to or in which respectively the charity in question is wholly or partially situated or is administered, and may take and receive any evidence and information, and hear and inquire into any objections or questions relating to the scheme or charity in question, and may from time to time adjourn any such sitting, and public notice shall be given by such inspector(*a*) of every such sitting (except an adjourned sitting) fourteen days at the least before the holding thereof, in such other mode as in the judgment of the said Board shall be sufficient to ensure publicity.

(*a*) Now "assistant commissioner": see Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

Inspectors to report results of inquiries to the Board.

58. Every inspector(*a*) to whom any such matter shall be referred shall report in writing to the said Board the result of his inquiry, and whether in his opinion the scheme in question should be approved with or without any alteration or modification thereof, and such report shall specify or indicate the alterations (if any) which such inspector(*a*) shall consider desirable, with the reasons for the same, and also the nature of the objections (if any) which shall have been made to the scheme, and the opinion of the said inspector(*a*) thereon, and the said Board shall consider such report, and if, as the result of such report or after further inquiry, they shall be satisfied therewith, they may proceed to approve the scheme in question either with

or without any alteration, and to certify the same in Sect. 58.
manner hereinafter mentioned.

(a) Now "assistant commissioner": see Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

59. Every scheme to be approved by the said Board shall be certified by them, and for that purpose shall be embodied in a certificate to be made by the said Board, and sealed with their seal; and in every case a copy of such certificate shall be deposited in some convenient place within the parish or one of the parishes or the district in which the charity in question shall wholly or partially be situated or administered, and at the office in London of the Registrar of County Courts Judgments^(a), and a notice shall also be given, in such manner as the Board shall direct, which notice shall refer to the certificate so deposited, and shall state the intention of the Board to proceed with the scheme thereby certified.

Scheme when approved to be certified by the Board. Copies of certificates to be deposited in the parish, &c., and notice to be given.

(a) Now "office of the Board": Charit. Trusts Amend. Act, 1855, s. 43, *post*.

60. The said Board shall in the month of February in every year make a report to her Majesty of all their proceedings during the preceding year up to the thirty-first day of December then last, and such report shall, within fourteen days after the making thereof, be laid before both Houses of Parliament, if Parliament be then sitting, or otherwise within fourteen days after the meeting thereof; and in such report the said Board shall specially distinguish and set forth in full all the schemes (if any) approved by them under the provisions lastly hereinbefore contained, together with the grounds of such their approval, and the objections (if any) which have been made thereto, and all proceedings had in respect of such objections and the grounds on which any such objections have been overruled; and in case it shall be

Annual report to be laid before Parliament, setting forth all the schemes provisionally approved, &c.

Sect. 60. enacted by any Act of Parliament that any such scheme or schemes so certified shall be confirmed and take effect, either with or without any alterations or modifications thereof respectively, every such Act shall be deemed a public general Act (a).

Acts confirm-
ing schemes
to be deemed
public Acts.

(a) By the City of London Parochial Charities Act, 1883, s. 47, *post*, the report under this section must describe the proceedings of the commissioners under that Act, and have annexed to it copies of schemes approved and orders made under that Act.

Trustees of
charities to
keep accounts
(a).

61. The trustees or persons acting in the administration of every charity shall, in books to be kept by them for that purpose, regularly enter or cause to be entered full and true accounts of all money received and paid respectively on account of such charity (b), *and on or before the twenty-fifth day of March in every year, or on or before such other day as shall or may be fixed and appointed for that purpose by the said Board, shall cause a statement in writing to be made of the income and revenues, whether actually paid or then due, and the actual receipts and expenditure of such charity for the year ending on the thirty-first day of December then next preceding, or on some other convenient day to be fixed and appointed for that purpose by the said Board, and also a balance-sheet containing a clear statement of the balance of such account, which statement and balance-sheet respectively shall be certified under the hand of some one or more of such trustees or persons (and audited by the auditor of such charity, if any there be); and as to every charity whose gross annual income for the time being shall not exceed thirty pounds, every such statement and balance-sheet respectively, or a duplicate or true copy thereof respectively, shall be delivered or sent by such trustees or persons free of charge to the clerk of the County Court or some one of the County Courts (if more than one) to whose jurisdiction such charity may be subject under this Act (in case such charity be subject to the jurisdiction of any County Court under this Act), or if such charity be not subject to the jurisdiction of any County Court, then to the clerk of the County Court for the district or any*

one of the districts (if more than one) wherein or nearest adjoining whereto such charity is established, or the property thereof (in whole or in part) is situate or administered and distributed; and as to every charity whose gross annual income for the time being shall exceed thirty pounds, every such statement and balance-sheet, or a duplicate or true copy thereof respectively (unless the said Board shall otherwise direct), shall be delivered or sent free of charge to the clerk of the peace for the county or the division of the county, or some one of the counties or divisions of counties (if more than one) in which the charity is established, or the property thereof is wholly or partially situated or administered and distributed; and every such statement and balance-sheet, or a duplicate or true copy thereof respectively, shall be kept and registered without fee or reward by the Registrar of County Courts Judgments or the clerk of such County Court, and the clerk of the peace of such county or division respectively, and shall be open to the inspection of all persons, at all seasonable hours, on payment of the sum of one shilling to the registrar or clerk for every such inspection; and any person may require and have a copy of any such statement and balance-sheet, or of any part thereof, paying therefor to such registrar or clerk after the rate of twopence for every seventy-two words or figures; and a duplicate or copy of every such statement and balance-sheet to be made according to the foregoing provision, so certified and audited as aforesaid, shall be delivered or transmitted, through the post or otherwise, free of charge, by such trustees or other persons, to the said Board, on or before the said twenty-fifth day of March in every year, or such other day as may be fixed and appointed by the said Board as aforesaid; and the said Board may from time to time by any order direct that the statement and balance-sheet, or a duplicate or true copy thereof respectively, of the accounts of any charity whose gross annual income exceeds thirty pounds, shall be delivered or sent to the clerk of the County Court in the same manner as if the income of such charity did not exceed thirty pounds; and the said Board may make and give such further and other orders and

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Sect. 61. *directions in relation to the delivery and publication of such accounts, and the form thereof, as they may think fit, which directions and orders shall be obligatory on and obeyed by all such trustees and persons as aforesaid.*

(a) The provisions as to the accounts of trustees are now contained in sects. 44 and 45 of the Charit. Trusts Amend. Act, 1855, *post*; and see note to sect. 44.

(b) The rest of this section is repealed by sect. 44 of the Charit. Trusts Amend. Act, 1855, *post*.

Exemptions
from opera-
tion of
Act (a).

62. This Act shall not extend to the Universities of Oxford, Cambridge, London, or Durham, or any college or hall in the said Universities of Oxford, Cambridge, and Durham, or to any cathedral or collegiate church, or to any building registered as a place of meeting for religious worship with the Registrar-General of Births, Deaths, or Marriages in England and Wales, and *bonâ fide* used as a place of meeting for religious worship (b), nor shall this Act, for the period of two years from the passing thereof, extend or be in any manner applied to charities or institutions, the funds or income of which are applicable exclusively for the benefit of persons of the Roman Catholic persuasion, and which are under the superintendence or control of persons of that persuasion (c), nor shall this Act extend or be applied to the Commissioners of Queen Anne's Bounty, or to the British Museum, or to any friendly or benefit society, or savings-bank, or any institution, establishment, or society for religious or other charitable purposes, or to the auxiliary or branch associations connected therewith, wholly maintained by voluntary contributions, or any bookselling or publishing business carried on by or under the direction of any society wholly or partially exempted from this Act, so far as such business is or shall be carried on by means of voluntary contributions only, or the capital or stock of such business; and where any charity is maintained partly by voluntary subscriptions and partly by income arising from any endowment, the powers and provisions of the Act shall, with respect to such charity, extend and apply to the income from endowment only,

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to the exclusion of voluntary subscriptions, and the application thereof; and no donation or bequest unto or in trust for any such charity as last aforesaid, of which no special application or appropriation shall be directed or declared by the donor or testator, and which may legally be applied by the governing or managing body of such charity as income in aid of the voluntary subscriptions, shall be subject to the jurisdiction or control of the said Board, or the powers or provisions of this Act; and no portion of any such donation or bequest as last aforesaid, or of any voluntary subscription, which is now or shall or may from time to time be set apart or appropriated and invested by the governing or managing body of the charity, for the purpose of being held and applied or expended for or to some defined and specific object or purpose connected with such charity, in pursuance of any rule or resolution made or adopted by the governing or managing body of such charity, or of any donation or bequest in aid of any fund so set apart or appropriated for any such object or purpose as aforesaid, shall be subject to the jurisdiction or control of the said Board or the powers or provisions of this Act (*d*); and nothing in this Act shall subject the funds or property of any missionary or other similar society, or the missionaries, teachers, or officers of such society, or of any branch thereof, which funds or property shall not be within the limits of England or Wales, to the jurisdiction of the said Board: Provided always, ^{1898. 1. 22. 610.} ^{1898. 2. — 687.} that the said exemption shall not extend to any cathedral, collegiate, chapter, or other schools.

(a) Institutions included in this section are expressly exempted from Exemptions the Charit. Trusts Amend. Act, 1855: see sects. 47 and 48 of that Act, from Charit. *post.* And by sect. 49 of the same Act the colleges of Eton and Winchester are expressly excepted from that and the present Act. The institutions thus exempted are also exempted from the other Charit. Trusts Acts by reason of the fact that each of those Acts is directed to be read as one with the present Act: see n. (a) to sect. 1 of this Act, *ante*.

Exempted charities may apply to have the benefit of the Acts extended to them either wholly or partially: Charit. Trusts Act, 1869, s. 14, *post*.

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(a), (b), (c).

Sanction of
commissioners to
legal proceed-
ings.

In the case of charities falling within the exemptions of this section, the consent of the Charity Commissioners to legal proceedings under sect. 17 of this Act, *ante*, is not required.

Thus, their consent was not required to an action for removing the minister of a building registered as a place of meeting for religious worship, and executing the trusts thereof: *Glen v. Gregg*, 21 Ch. D. 513.

A contrary opinion was expressed by Lord Chelmsford in the earlier case of *Att.-Gen. v. Sidney Sussex College, Cambridge*, 21 Ch. D. 514, n. An information had been filed against two Cambridge colleges as to the proceeds of estates held under a certain will, and Lord Chelmsford said that it would be strange if this section rendered sect. 17 inapplicable, "as then a clause intended for the benefit of the colleges and universities would be turned to their disadvantage." This, however, was a mere dictum. See, further, *Re Wilson's Will*, 19 Beav. 594; *Pease v. Pattinson*, 32 Ch. D. 154; *Strickland v. Weldon*, 28 Ch. D. 426.

Property
belonging
partly to
exempted
charity.

Where part of an estate belongs to a charity which is not within this section, and the residue to purposes connected with a college or other institution which is within this section, an application to the Court for purposes connected with the institution which is within the section does not require the sanction of the Charity Commissioners: *Re Meyrick's Charity*, 24 L. J. Ch. 669. See also note (a) to sect. 17, *ante*, p. 479; and *Att.-Gen. v. Dean and Canons of Manchester*, 18 Ch. D. 596, there cited. See also *Royal Society of London v. Thompson*, cited in note (d) to the present section, *post*.

Restrictions
as to sales, &c.

Similarly, the restrictions on sales, mortgages, and leases imposed by sect. 29 of the Charit. Trusts Amend. Act, 1855, are not applicable in the case of institutions within this section: *Governors for Relief of Poor Widows, &c. of Clergymen v. Sutton*, 27 Beav. 651; *Royal Society of London v. Thompson*, 17 Ch. D. 407; *Finnis and Young to Forbes and Pochin* (No. 2), 24 Ch. D. 591.

Registered
places of
worship.

(b) See *Glen v. Gregg*, 21 Ch. D. 513, cited in the last note.

A similar exemption is contained in sect. 9 of the Places of Religious Worship Registration Act, 1855. As to this, and as to the registration of places of worship, see *ante*, pp. 285, 286.

Two circumstances must concur in order to bring a case within the present exemption: in the first place, the building must be registered as a place of worship; in the second place, it must be *bonâ fide* used as such.

If either of these requirements is not satisfied, it would seem that the case does not strictly come within the exemption. In practice, however, this distinction has not been regarded.

Partial
removal of
exemption.

This exemption has been substantially removed by sect. 15 of the Charit. Trusts Act, 1869, which brings places of worship within the jurisdiction of the Board, so far as relates to the appointment and removal of trustees, the vesting of real or personal estate, and the establishment of schemes: see note (a) to that section, *post*.

Roman
Catholic
charities.

(c) The words in italics were repealed by the Stat. Law Rev. Act, 1875.

The exemption of Roman Catholic charities had previously been from time to time extended by the Charit. Trusts Amend. Act, 1855, s. 47, and by 19 & 20 Vict. c. 76, 20 & 21 Vict. c. 76, and 21 & 22 Vict. c. 51, to 1st September, 1859. After that date such charities became subject to the Charit. Trusts Acts.

Voluntary Subscriptions.

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(d).

(d) The jurisdiction of the Court in regard to voluntary subscriptions has already been considered: see *ante*, p. 97. It may, however, be useful to examine the cases more closely.

Jurisdiction of Court.

The jurisdiction of the Court to administer a charity estate depends on the existence of a trust.

If the Court finds that there is property impressed with a charitable trust, it will see to the execution of the trust and will administer the estate. It is altogether immaterial whether the property originated in the donation of one person or the subscriptions of many. If there is, in fact, property held upon trust, the Court has jurisdiction.

Existence of trust.

Thus, the Court will execute the trusts of a fund raised by voluntary subscriptions for the establishment of a hospital: *Att.-Gen. v. Kell*, 2 Beav. 575.

Subscriptions forming permanent fund.

And it makes no difference whether the fund is subscribed to form the endowment of a permanent charitable institution, or whether it is intended to be applied at once to answer an immediate charitable purpose.

Immediate distribution.

Thus, where a fund had been raised by voluntary subscriptions for the relief of sufferers in a colliery accident, the Court interfered to see to its application: *Pease v. Pattinson*, 32 Ch. D. 154. So, again, where a fund had been raised for the improvement and repair of a church: *Strickland v. Weldon*, 28 Ch. D. 426. In the last-mentioned case the action failed because it was improperly constituted by reason, among other things, of the absence of the Attorney-General.

The case is quite different where there is no fund as yet in existence; as, for instance, where the Court is asked to give directions with regard to voluntary subscriptions which may or may not be collected. Obviously, the Court can no more administer subscriptions not yet collected than it can declare the trusts of a bequest before the testator dies. In one case, an information was filed for the execution of the trusts of a dissenting chapel, and it appeared that the expenses of the repairs of the building, and of the celebration of divine service, were defrayed by voluntary contributions made from time to time at the church door. Lord Eldon said: "This Court has nothing to do with the voluntary subscriptions which may be paid to-day and withheld to-morrow; its jurisdiction is founded only on its right to declare the trust of the chapel, and how the chapel is to be used": *Leslie v. Birnie*, 2 Russ. 114, 119. See *Davis v. Jenkins*, 3 V. & B. 151.

No fund in existence.

In *Leslie v. Birnie*, if the subscriptions had actually been raised, and the trustees had refused to apply them for the purposes intended, the Court would certainly have interfered to enforce the proper application of the fund. The case would then have been similar to *Pease v. Pattinson* and *Strickland v. Weldon*.

And the fact that a charity is dependent for its income on voluntary subscriptions may make the Court reluctant to interfere, even though it is possessed of property settled by a trust deed.

Charity being dependent on voluntary subscriptions may make Court reluctant to interfere.
Ex parte Pearson.

In *Ex parte Pearson*, 6 Price, 214, there was a school, the only endowment of which was the land and building, which was settled by a trust deed, the income of the charity being entirely derived from voluntary subscriptions. The Court, although not denying that it had jurisdiction to execute the trusts of the deed, yet considered that it ought not lightly to interfere where the result might be to stop the voluntary subscriptions.

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(d).

Richards, C. B., said (at p. 221): "This Court, being called upon to interfere with respect to this particular charity, must not fail to recollect that it has no existence except from the daily and voluntary contribution of the subscribers who may withhold their subscriptions to-morrow, when there would be an end of the institution altogether. If we had any jurisdiction in a case of this description, it would be a most injurious thing to make an order now, in its nature decretal, in a case wherein. . . . the institution might in consequence be put an end to."

Jurisdiction of Charity Commissioners.

The question of the jurisdiction of the Charity Commissioners is one of greater complexity. It depends upon the obscure provisions of this section, by which exemptions from the Act are created in the case of institutions "wholly maintained by voluntary contributions" and charities "maintained partly by voluntary subscriptions and partly by income arising from an endowment."

Analysis.

These provisions may be analysed thus:—

- (1) Institutions wholly maintained by voluntary contributions are exempted from the Act.
- (2) Charities maintained partly by voluntary subscriptions and partly by income arising from an endowment are exempted so far as relates to the voluntary subscriptions and the application thereof.
 - (a.) Donations and bequests of which no special application or appropriation is directed by the donor or testator, and which may be legally applied as income in aid of the voluntary subscriptions, are also exempted.
 - (b.) Such donations, bequests, and voluntary subscriptions remain exempt, even though appropriated and invested by the governing body for some specific object connected with the charity.
 - (c.) Donations and bequests in aid of a fund so appropriated are also exempt.

Interpretation.

The following interpretation of the provisions seems to be that which is most reasonable in itself and most in accordance with the decisions.

"Voluntary contributions," and "voluntary subscriptions," identical.

No distinction in meaning can be drawn between voluntary contributions and voluntary subscriptions, although it must be confessed that the use by the legislature of the two expressions, where either would have sufficed, is inexplicable. In *Governors for Relief of Poor Widows, &c. of Clergymen v. Sutton*, 27 Beav. 651, Lord Romilly treated the expressions as identical in meaning. That was a case of a charity "maintained partly by voluntary subscriptions and partly by income arising from an endowment," and the M. R. in his judgment made frequent use of the expression "voluntary contributions" in place of "voluntary subscriptions."

Include only subscriptions, &c., intended to be used as income.

"Voluntary contributions" and "voluntary subscriptions" are both used in the section in contradistinction to "income arising from an endowment." It follows that the expressions include only contributions and subscriptions intended by the donor to be used as part of the current income of the charity. On the other hand, they are not confined to recurrent subscriptions, but must be extended to every donation and bequest which may properly be applied as income and not as capital.

Meaning of "endowment."

It was held by Lord Romilly, in *Governors for Relief of Poor Widows, &c. of Clergymen v. Sutton*, 27 Beav. at p. 663, that "endowment," as used in this section, has reference to an endowment made for some specific or particular purpose of trust, as distinct from the general purpose and object of

the association; and he construed the definition of "endowment" in sect. 66 of this Act in accordance with this view: see *post*, p. 533.

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(d).

It is submitted (*post*, p. 533) that "endowment," as defined in sect. 66, includes every kind of capital property belonging to a charity. And if the view above taken, that voluntary contributions and subscriptions include only subscriptions intended to be used as income, is correct, it would seem that there is no reason why, in this section also, "endowment" should not comprise every kind of capital property belonging to the charity.

If this is so, any gift of a capital sum to a charity is an endowment. A donation or bequest which, although not made for a specific purpose or trust, is nevertheless intended by the donor or testator to be treated as a capital fund of which the income only is to be expended for the purposes of the charity, is within this definition. So also is a fund raised by voluntary subscriptions, if such subscriptions are not intended to be employed as part of the income of the charity, but to constitute a permanent capital sum of which the income only is to be used.

This interpretation seems to give an intelligible meaning to the section. "Endowment" includes any gift, whether derived from the donation of one person or the subscriptions of many, intended to be used as capital. "Voluntary contributions" and "voluntary subscriptions," which, as has been stated, are used in contradistinction to "income arising from an endowment," comprise all gifts (including donations and bequests) intended to be used as income.

Distinction between "endowment" and "voluntary contributions" or "subscriptions."

In *Pease v. Pattinson*, 32 Ch. D. 154, a fund raised by voluntary subscriptions and vested in trustees for the relief of the sufferers from a colliery accident was held to be a charity "wholly maintained by voluntary contributions."

Pease v. Pattinson.

An opinion to the like effect was expressed with regard to a fund raised by voluntary subscriptions for the purpose of improving a church: *Strickland v. Weldon*, 28 Ch. D. at p. 430.

Strickland v. Weldon.

It will be noted that in neither of these cases was a permanent fund intended to be created. In each of them the whole of the sum collected was intended to be applied once for all for the purpose indicated.

"Voluntary contributions" and "voluntary subscriptions" retain their character, although they may not in fact have been applied as part of the income of the charity, but may have been, by the action of the governors or trustees, set apart and invested as a permanent fund for the benefit of the charity. In other words, it is the intention of the donors or contributors which constitutes a fund an endowment, not the purpose to which it has in fact been applied.

Voluntary contributions and subscriptions invested as permanent fund.

As regards charities "maintained partly by voluntary subscriptions and partly by income arising from an endowment," this rule merely re-states the express provision of the section, that donations and bequests applicable as income, and investments by the charity of such donations, bequests, and voluntary subscriptions, are exempt from the Act.

Charity partly maintained by voluntary subscriptions.

The case of a charity of this kind arose in *Governors for Relief of Poor Widows, &c. of Clergymen v. Sutton*, 27 Beav. 651. There the plaintiff charity was founded by charter in 1678. During the early period of its existence its funds had arisen entirely from voluntary donations and subscriptions. The governors had also from time to time accepted grants for special charitable purposes, distinct from the general purposes of the corpo-

Governors for Relief, &c. of Clergymen v. Sutton.

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(d).

ration, but no question with regard to them arose in this case. In 1682 the governors purchased out of the voluntary subscriptions certain freehold property for the general purposes of the charity, no special trust being declared of it. The plaintiffs had recently agreed to sell this property to the defendants, and the question was whether the sanction of the Charity Commissioners was required under sect. 29 of the Charit. Trusts Amend. Act, 1855, *post*. It was held that the property was not an endowment, but that, having been purchased by voluntary subscriptions, it retained that character, and was within the exemptions of this section.

Royal Society of London v. Thompson.

In *Royal Society of London v. Thompson*, 17 Ch. D. 407, the Royal Society having agreed to sell certain lands which had been purchased by them in 1732 out of moneys arising from the subscriptions of members, the question was raised whether the sanction of the Charity Commissioners was required. It appeared that the Royal Society was a voluntary association incorporated by charters of Charles II., that its members were elected by ballot, subject to certain payments, and that no one outside the society could claim admission to it, nor were there any duties which the public, as distinguished from its own fellows or members, could call upon the society to perform. There were certain trust funds administered by the society, which constituted endowments for various purposes, but no part of them was applied in payment of the purchase-money of the estate in question. It was held by Hall, V.-C., that the case came within this section, and that the sanction of the Charity Commissioners was not required.

Institution wholly maintained by voluntary contributions.

The same rule is applied to the case of an institution wholly maintained by voluntary contributions. Here, again, investments of voluntary contributions as a permanent fund do not constitute an endowment: *Finnis and Young to Forbes and Pochin* (No. 2), 24 Ch. D. 591. See further as to this case, *post*, p. 533.

Donation and bequest.

In *Re Wilson's Will*, 19 Beav. 594, it was held that a legacy to "The Newport Pagnell Academy, of which the Rev. Thomas Bull is tutor," which was maintained partly by an income arising from an investment of moneys, but principally by voluntary contributions, came within the words "donation and bequest," and that the sanction of the commissioners was not required to a petition for payment of it out of Court.

No special application directed.

Where a testator gave a fund to trustees in trust to apply the income in supporting a school which he had founded, but gave power also to revoke the trust and divert the fund to other purposes, it was held not to be a case in which no special application had been directed by the testator, and, therefore, not to be within this section: *Re Sir Robert Peel's School at Tamworth*, L. R. 3 Ch. at p. 549.

Burden of proof.

The burden of proof that a charity is within the exemptions of this section is upon those who allege it. See, however, *Finnis and Young to Forbes and Pochin* (No. 2), 24 Ch. D. 591, stated *post*, p. 533, and the observations there made upon that case.

Exempted charities may petition Commissioners to have benefit of Act.

63. *It shall be lawful for any of the charities exempted from the operation of this Act, by order or resolution duly made in conformity with the constitution or rules of such charity (and which in that case only shall be binding), to*

apply by petition to the Commissioners to have the benefit of this Act either generally or as to any of the provisions herein contained; and such petition shall be under the seal of such charity if incorporated, and if not, then under the hands of the major part of the trustees and governing body of such charity; and in such case it shall be lawful for the Commissioners, if they shall think fit, to make an order in conformity with such application, and such charity shall thenceforth be entitled to and be bound by all the provisions of this Act, if admitted generally thereto, or by such of the enactments thereof as shall be mentioned and specified in such order of the Commissioners, but in either case in the same manner as if such charity had not been exempted from this Act, or such exemption had not extended to the enactments specified in such order (a). **Sect. 63.**

(a) Repealed by sect. 17 of the Charit. Trusts Act, 1869, sect. 14 of that Act being substituted for it.

In *Hamilton v. Spottiswoode*, 15 W. R. 118, an application had been made on behalf of a charitable institution, exempted from the Act, to the Charity Commissioners under this section, in pursuance of a resolution passed at a meeting of the trustees and major part of the governing body of the institution. The meeting, however, consisted only of the remaining members of the original committee, the governing body having never been properly renewed according to the rules of the institution, and the plaintiff, who was one of the trustees, dissented. It was held by Lord Romilly, M. R., that there had been no "order or resolution duly made in conformity with the constitution or rules" of the charity, and, consequently, that the Charity Commissioners had no power to accede to the application. Under the substituted section, the application may be made by such of the trustees or the persons acting in the administration of the charity as might, under the Charit. Trusts Acts (if the charity were not one exempted from the operation of the Acts), apply for a scheme. **Application by governors improperly constituted.**

64. Provided also, that if any question or dispute shall arise among the members of any charity *exempted from the operation of this Act (a)* in relation to any office, or the fitness or disqualification of any trustee or officer, or his election or removal, or generally in relation to the management of the charity, it shall be lawful for two-thirds of the members present at any special meeting, duly convened by notice for the purpose in the same manner in which meetings of such charity are by the **Disputes among members of charities may be referred to the arbitration of the Commissioners (a).**

Sect. 64. rules thereof appointed to be held and convened, to refer such question or dispute to the arbitration of the Commissioners, who shall accept such reference and act therein as arbitrators, and their award shall be final, and may be made a rule of her Majesty's High Court of Chancery (b).

(a) Sect. 46 of the Charit. Trusts Amend. Act, 1855, *post*, extends this section to all charities within the Charit. Trusts Acts. The words in italics having thus become unnecessary were repealed by the Stat. Law Rev. Act, 1875.

See, further, as to the protection from liability afforded by these Acts, sect. 16 of this Act, *ante*, p. 475, and note thereto.

(b) As to making awards rules of Court, see Dan. C. P. 6th ed. pp. 2189, 2190.

Legal estate in charity lands vested in municipal corporations, &c. at the date of 5 & 6 Will. IV. c. 76, and not since conveyed to trustees, shall vest in trustees without conveyance, &c.

65. *The legal estate in all lands which at the time of the passing of the Act of the Session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, was vested in the body corporate of any borough which became subject to the provisions of the said Act, or in any one or more of the members of such body corporate, in his or their corporate capacity, solely or together with any person or persons elected solely by such body corporate, or solely by any particular number, class, or description of members of such body corporate, in whole or in part in trust or for the benefit of any charitable uses or trusts whatsoever, and which legal estate shall not have been since duly conveyed or assured to and vested in the trustees appointed by the Lord High Chancellor under the provisions of the said Act, or such of them as shall be surviving and continuing trustees, or otherwise lawfully conveyed, aliened, or disposed of by such body corporate or member or members thereof, shall from and immediately after the passing of this Act, and without any actual conveyance, assignment, or other assurance thereof, be vested in the trustees so appointed, or such of them as shall be surviving and continuing trustees under such appointment as aforesaid, according to the respective estates and interests therein, and subject to such and the same charges and incumbrances and upon such and the same trusts as the same were respectively*

subject to previously to such vesting ; and in every case, upon the death, resignation, or removal of any of the trustees, and upon any appointment of any new trustee or trustees respectively, the legal estate in the same lands, and in all other lands subject to any such charitable uses or trusts which may for the time being be vested in the trustees or any of them, or in any persons or the heirs or devisees of any person who may have died, resigned, or been removed, shall vest in the persons who after such death, resignation, or removal, and such appointment of such new trustee or trustees respectively, shall continue or be the trustees for the time being, without any conveyance or assurance whatsoever (a). Sect. 65.

(a) Repealed by the Municipal Corporations Act, 1882, *post* ; sect. 133 of that Act being substituted. See also *ante*, pp. 197 *et seq.*

66. In the construction of this Act, except where the context or other provisions of the Act may require a different construction, the expression "Court of Chancery" shall mean and include the Master of the Rolls and every Judge of the Court of Chancery in England ; the expression "Lord Chancellor" shall mean and include the Lord Chancellor of Great Britain and the Lord Keeper and Commissioners of the Great Seal of Great Britain for the time being ; *the expressions "District Court of Bankruptcy" and "District Court" shall mean and include every District Court of Bankruptcy established or to be established under the Act of the fifth and sixth years of the reign of her present Majesty, chapter twenty-two, or under any other Act or Acts passed or to be passed for the alteration or amendment or the extension of the same Act, or for the establishment of any District Court or Courts of Bankruptcy in England or Wales, and every Commissioner or Judge of every such District Court(a) ; the expression "County Court" shall mean and include every County Court holden or established or to be holden or established under the Act of the ninth and tenth years of her Majesty, chapter ninety-five, or any Act or Acts passed or to be passed for the alteration or*

Interpretation
of terms.

Sect. 66. extension of the same Act (*b*), and every Judge of any such Court; the expression "charity" shall mean every endowed foundation and institution taking or to take effect in England or Wales, and coming within the meaning, purview, or interpretation of the statute of the forty-third year of Queen Elizabeth, chapter four, or as to which, or the administration of the revenues or property whereof, the Court of Chancery has or may exercise jurisdiction (*c*); the expression "trustee" of any charity shall mean and include every person and corporation seised or possessed of or entitled to any real or personal estate, or any interest therein, in trust for or for the benefit of such charity, or all or any of the objects or purposes thereof, and every member of any such corporation; and the expression "the Board" shall mean the said Charity Commissioners sitting as a Board under this Act (*d*); and the expression "endowment" shall mean and include all lands and real estate whatsoever, of any tenure, and any charge thereon, or interest therein, and all stocks, funds, monies, securities, investments, and personal estate whatsoever, which shall for the time being belong to or be held in trust for any charity, or for all or any of the objects or purposes thereof (*e*); and the expression "land" shall extend to and include manors, messuages, buildings, tenements, and hereditaments, corporeal and incorporeal, of every tenure and description.

(*a*) The words in italics were repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869, s. 130.

(*b*) Now the County Courts Act, 1888, 51 & 52 Vict. c. 43.

Charity.

(*c*) "Charity" includes every institution in England or Wales endowed for charitable purposes, but not any charity or institution expressly exempted from the operation of this Act (see sect. 62, *ante*), and words applying to any person or individual apply also to a corporation, whether sole or aggregate.

As to what are charities within the Statute of Elizabeth, see *ante*, Chap. I.

**Endowment
not perpetual.**

A charity is not the less a charity within this definition because its endowment is not perpetual. An endowment which the trustees are at liberty to put an end to is, until that has been done, within the Act: *Re Sir Robert Peel's School at Tamworth*, L. R. 3 Ch. 543; and see *ante*, p. 33.

According to this definition the question whether a charity is within the Act is not governed by the question whether the charity is to be administered in England or Wales, but by the question whether the endowed foundation or institution is to take effect in England or Wales: *Re Duncan*, L. R. 2 Ch. at p. 360.

Sect. 66
(c), (d), (e).

A charity founded and endowed in England or Wales, although the revenues are applied abroad, is within this definition: *Re Duncan*, L. R. 2 Ch. 356. It was stated in that case (see p. 360), that the Charity Commissioners consider charities, of which the proceeds are applicable in England and Wales, to be within the Act, although the endowments may not have been in England or Wales.

That an English charity, of which the revenues are to be applied abroad, was within the jurisdiction of the Court of Chancery, appears from *Att.-Gen. v. Ironmongers' Co.*, 10 Cl. & F. 908; and *Att.-Gen. v. Gibson*, 2 Beav. 317, n.: and see *ante*, pp. 127, 128.

(d) By sect. 6 of this Act, *ante*, it is provided that the Charity Commissioners shall sit, from time to time, as a Board for carrying this Act into execution, and that any two of such commissioners may form a Board. Board.

(e) It was held, by Romilly, M. R., that this definition of "endowment" must be construed consistently with what he held to be the meaning of the word in sect. 62, namely, the devotion of property to a specific and particular trust; and that the present clause does not mean that the mere possession by a charity of any property of the kinds here enumerated constitutes an "endowment," but that any such property may be constituted an endowment by being impressed with a particular and specific trust: *Governors for Relief of Poor Widows, &c. of Clergymen v. Sutton*, 27 Beav. at p. 665. See *ante*, pp. 526, 527. Endowment.

This interpretation seems unsatisfactory. There is nothing in the definition of "endowment" contained in the section to point to any distinction between property impressed with a particular and specific trust and other property. It is submitted that the definition includes all capital property belonging to a charity of whatever kind, whether impressed with a particular and specific trust or not, and whether derived from voluntary subscriptions or from a single donation or from whatever source; and it has already been suggested (*ante*, p. 527) that this is the meaning which ought to be attributed to "endowment" in sect. 62 of this Act.

The case of *Finnis and Young to Forbes and Pochin* (No. 2), 24 Ch. D. 591, seems also to be open to criticism. In that case the facts, as stated by the affidavit of the vendors' solicitor, were as follows:—The Tower Ward Charity School was a school supported by voluntary subscriptions, the bulk of which, as collected, were required for the purposes of the school, while the residue was invested in the name of the treasurer or appropriated by the directors for the benefit of the school. In 1808, the then school premises having been sold for 1,200*l.*, 91, Great Tower Street was, in consideration of 2,000*l.* recited to have been paid out of funds belonging to the charity, conveyed to the directors of the charity upon the trusts therein mentioned. Bacon, V.-C., held that there was no endowment. "In my opinion," said his honour (at pp. 593, 594), "the affidavit is sufficient, and no inference can be drawn from any word in the affidavit that it was an endowment charity, and it cannot be disputed that if it is not an endowment charity, the Charitable Trusts Act does not apply to it. . . . The school is kept up by nothing but volun-

*Finnis and
Young to
Forbes and
Pochin.*

Sect 66
(e).

tary subscriptions. There is no trace of any endowment; there is not a trace of anything from which it can be inferred that this charity had anything in the shape of an endowment."

The first observation upon this decision is that, although the affidavit stated that the school had been supported by voluntary contributions, it did not state that those contributions were contributions intended to be applied as income. Some of the contributions may, therefore, have been intended to be used as a capital fund. In this, however, the case merely followed the view of "endowment" taken in *Governors for Relief of Poor Widows, &c. of Clergymen v. Sutton*, ante, and is subject to the same criticism as has been hazarded in regard to that decision.

The second observation is this. The affidavit made no statement as to the mode in which the school premises themselves were provided. Surely, if the funds with which the school was kept up did not constitute an endowment, the school premises did. The old school was sold for 1,200*l.*, and the property in regard to which the question in the case was raised was afterwards purchased for 2,000*l.*, stated to have been paid out of the charity funds. It is certainly probable that that 2,000*l.* was made up in part of the purchase-money received in respect of the old school premises. If so, it is difficult to see how that part of the fund, at all events, did not constitute an endowment.

It is worthy of note that in *Royal Society of London v. Thompson*, 17 Ch. D. at pp. 415, 416, Hall, V.-C., prefixed to the order a statement that the property had been acquired out of funds which might be legally applied as income, and did not form an endowment; but that in the case now under consideration, Bacon, V.-C., refused to insert any statement in the order, except that the property "did not form an endowment," saying that the other words in the order of Hall, V.-C., did not seem to apply.

Burden of proof.

Furthermore, it must be observed that the effect of the decision in *Finnis and Young for Forbes and Pochin* (No. 2) seems to be to throw the burden of proof that a charity is subject to the Charitable Trusts Acts upon those who allege that it is an endowment charity. The Vice-Chancellor says "no inference can be drawn from any word in the affidavit that it was an endowed charity." The Charitable Trusts Acts bring every charity within the jurisdiction of the Charity Commissioners, except such as are exempted by sect. 62. If a charity is found in existence with property belonging to it, *prima facie* it is within the Acts, and the burden of proof that it is exempted must surely rest upon those who raise that contention.

Investment of voluntary contributions.

The investment by a charity of its voluntary contributions in land, or other permanent security, does not convert it into an endowment: *Governors for the Relief of Widows, &c. of Clergyman v. Sutton*, supra; *Finnis and Young for Forbes and Pochin* (No. 2), 24 Ch. D. 591, and other cases cited in note (d) to sect. 62 of this Act, ante, p. 527.

Extent of Act.

67. This Act shall not extend to Scotland or Ireland.

Short title.

68. This Act may be cited as "The Charitable Trusts Act, 1853."

THE CHARITABLE TRUSTS AMENDMENT
ACT, 1855.

18 & 19 VICT. c. 124.

An Act to amend the Charitable Trusts Act, 1853.

[14th August, 1855.]

WHEREAS it is expedient to extend and amend the Charitable Trusts Act, 1853, as hereinafter provided: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. "The Charitable Trusts Act, 1853," hereinafter called "the principal Act," and this Act, shall be construed together as one Act, and any provisions of the principal Act inconsistent with this Act are hereby repealed (a).

16 & 17 Vict.
c. 137, and
this Act, to
be construed
together.

(a) See note (a) to sect. 1 of the Charit. Trusts Act, 1853. Any provisions of this Act, and of the Charit. Trusts Act, 1853, inconsistent with the Charit. Trusts Act of 1860, are repealed by sect. 1 of that Act, *post*.

2. *So much of the principal Act (section 4) as provides that after the thirty-first day of March one thousand eight hundred and fifty-seven an annual salary shall be paid to one only of the Commissioners besides the Chief Commissioner, is hereby repealed (a).*

Provision as
to the
salary of one
of the Com-
missioners
repealed.

(a) Repealed by Stat. Law Rev. Act, 1875. The whole of sect. 4 of the principal Act is now repealed by sect. 6 of the Charit. Trusts Act, 1887, *post*. Under sect. 3 of the End. Schools Act, 1874, *post*, the salaries of the Charity Commissioners and their officers are determined by the Treasury.

Sect. 3.

Power to
appoint
additional
inspectors.

3. *It shall be lawful for her Majesty and her successors, under the royal sign manual, to appoint additional inspectors (not exceeding three in number) for the purposes of this Act and the Charitable Trusts Act, 1853, and such additional inspectors shall hold office during pleasure, and shall be possessed of the same powers, authorities, and jurisdiction, and be entitled to the same privileges and emoluments, as the inspectors appointed under the said former Act of one thousand eight hundred and fifty-three (a).*

(a) Repealed by sect. 6 of the Charit. Trusts Act, 1887. By that Act "assistant commissioners" are substituted for "inspectors."

The acts of
the Board,
how to be
authenticated.

4. Every act of the Board (a) may be sufficiently authenticated by the seal of the Commissioners, and the signature of their secretary (b), *or in his absence of the chief clerk (c).*

(a) "The Board" means the Charity Commissioners sitting as a Board: Charit. Trusts Act, 1853, s. 66, *ante*.

(b) Or any officer of the Board authorized to act on behalf of the secretary: Charit. Trusts Act, 1887, s. 3, *post*.

(c) The words in italics are repealed by the Charit. Trusts Act, 1887, s. 6, *post*.

Entries in
and extracts
from the books
of the Board,
how to be
authenticated.

5. All orders, certificates, schemes, and other documents issued under the seal of the Board shall be deemed and taken to be the originals, and copies thereof shall be entered in the books of the Board, and all such entries may be sufficiently certified by the signature of the secretary (a), *or in his absence of the chief clerk (b):* every order, certificate, scheme, and other document purporting to be sealed with the seal of the Board shall be received in evidence without further proof; and any writing purporting to be a copy extracted from the said books, and to be certified as aforesaid, shall be received in evidence in like manner.

(a) Or any officer of the Board authorized to act on behalf of the secretary: Charit. Trusts Act, 1887, s. 3, *post*.

(b) The words in italics are repealed by sect. 6 of the Charit. Trusts Act, 1887, *post*.

6. The Board (*b*), or any Commissioner or inspector, such inspector (*c*) acting under the authority of the Board, may require written accounts and statements and answers to inquiries relating to any charity, or the property or income thereof, to be rendered or made to them respectively by all or any of the following persons; that is to say,

Sect. 6.

The powers of the Commissioners and inspectors to inquire into charities extended (*a*).

Trustees or persons acting or concerned in the administration of the charity, its property or income, or in the receipt or payment of any moneys thereof :

Agents of any such trustees or persons :

Depositaries of any funds or moneys of the charity :

Persons in the beneficial receipt of any funds thereof, or of any income or stipend therefrom :

Persons having the possession or control of any documents concerning the charity or any property thereof :

and the Board or the Commissioner or inspector may require the persons rendering or making any such account, statement, or answer to verify the same by oath or otherwise, and may administer such oath (*d*): Provided always (*e*), that nothing herein contained shall extend to give to the said Board or their inspectors (*c*) any power of requiring from any person holding or claiming to hold any property whatsoever adversely to any charity, or free or discharged from any charitable trust or charge, any information, or the production of any deed or document whatever, in relation to the property so held or claimed adversely, or any charitable trust or charge alleged to affect the same.

(*a*) This section and sects. 7, 8, and 9 extend the powers given by sects. 9 to 14 of the Charit. Trusts Act, 1853: see note (*a*) to sect. 9 of that Act, *ante*, p. 470.

See also sect. 19 of the Charit. Trusts Act, 1860, *post*, by which the Board may require documents belonging to charities to be transmitted to them for examination.

(*b*) The Charity Commissioners sitting as a board: Charit. Trusts Act, 1853, s. 66, *ante*.

(*c*) Now "assistant commissioner": Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

Sect. 3.

Power to
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3. *It shall be lawful for her Majesty and her successors, under the royal sign manual, to appoint additional inspectors (not exceeding three in number) for the purposes of this Act and the Charitable Trusts Act, 1853, and such additional inspectors shall hold office during pleasure, and shall be possessed of the same powers, authorities, and jurisdiction, and be entitled to the same privileges and emoluments, as the inspectors appointed under the said former Act of one thousand eight hundred and fifty-three (a).*

(a) Repealed by sect. 6 of the Charit. Trusts Act, 1887. By that Act "assistant commissioners" are substituted for "inspectors."

The acts of
the Board,
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4. Every act of the Board (a) may be sufficiently authenticated by the seal of the Commissioners, and the signature of their secretary (b), *or in his absence of the chief clerk (c).*

(a) "The Board" means the Charity Commissioners sitting as a Board: Charit. Trusts Act, 1853, s. 66, *ante*.

(b) Or any officer of the Board authorized to act on behalf of the secretary: Charit. Trusts Act, 1887, s. 3, *post*.

(c) The words in italics are repealed by the Charit. Trusts Act, 1887, s. 6, *post*.

Entries in
and extracts
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(a) Or any officer of the Board authorized to act on behalf of the secretary: Charit. Trusts Act, 1887, s. 3, *post*.

(b) The words in italics are repealed by sect. 6 of the Charit. Trusts Act, 1887, *post*.

6. The Board (*b*), or any Commissioner or inspector, such inspector (*c*) acting under the authority of the Board, may require written accounts and statements and answers to inquiries relating to any charity, or the property or income thereof, to be rendered or made to them respectively by all or any of the following persons; that is to say,

Sect. 6.

The powers of the Commissioners and inspectors to inquire into charities extended (*a*).

Trustees or persons acting or concerned in the administration of the charity, its property or income, or in the receipt or payment of any moneys thereof :

Agents of any such trustees or persons :

Depositaries of any funds or moneys of the charity :

Persons in the beneficial receipt of any funds thereof, or of any income or stipend therefrom :

Persons having the possession or control of any documents concerning the charity or any property thereof :

and the Board or the Commissioner or inspector may require the persons rendering or making any such account, statement, or answer to verify the same by oath or otherwise, and may administer such oath (*d*): Provided always (*e*), that nothing herein contained shall extend to give to the said Board or their inspectors (*c*) any power of requiring from any person holding or claiming to hold any property whatsoever adversely to any charity, or free or discharged from any charitable trust or charge, any information, or the production of any deed or document whatever, in relation to the property so held or claimed adversely, or any charitable trust or charge alleged to affect the same.

(*a*) This section and sects. 7, 8, and 9 extend the powers given by sects. 9 to 14 of the Charit. Trusts Act, 1853: see note (*a*) to sect. 9 of that Act, *ante*, p. 470.

See also sect. 19 of the Charit. Trusts Act, 1860, *post*, by which the Board may require documents belonging to charities to be transmitted to them for examination.

(*b*) The Charity Commissioners sitting as a board: Charit. Trusts Act, 1853, s. 66, *ante*.

(*c*) Now "assistant commissioner": Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

Sect. 6
(d), (e).

(d) To give false evidence is a misdemeanour: Charit. Trusts Act, 1853, s. 13, *ante*.

(e) This proviso is identical in language with sect. 15 of the Charit. Trusts Act, 1853: see note (a) to that section (*ante*, p. 474), and note (g) to sect. 17 of the same Act (*ante*, p. 482), and cases there cited.

Power to
require trustees
and
others to
attend and be
examined (a).

7. The Board, or any Commissioner or inspector (b) acting as aforesaid, may require all or any such trustees and persons as aforesaid to attend before them respectively at such times and places as may be reasonably appointed, for the purpose of being examined in relation to the charity, and to answer such questions as may be proposed to them, and to produce upon such examination any documents in their custody or power relating to the charity or the property thereof, and may examine upon oath (c) or otherwise all such persons and all persons voluntarily attending, and may administer such oath: Provided always, that no person shall be obliged to travel in obedience to any such requisition more than ten miles from his place of abode.

(a) This section extends the powers conferred by sect. 12 of the Charit. Trusts Act, 1853, *ante*.

(b) Now "assistant commissioner": Charit. Trusts Act, 1887, s. 2, sub-s. 3, *post*.

(c) To give false evidence is a misdemeanour: Charit. Trusts Act, 1853, s. 13, *ante*.

Precepts or
orders for the
preceding
purposes, how
to be made.

8. All requisitions made under the foregoing authorities shall be made respectively by the order of the Board, or by precept, under the hand of the Commissioner or inspector (a) making the same.

(a) Now "assistant commissioner": Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

Persons not
complying
with requisitions,
&c. to be deemed
guilty of a contempt
of the Court of
Chancery (a).

9. Any person refusing or wilfully neglecting to comply with any such requisition, or with any order of the Board, made under the provisions of this Act or the principal Act, or destroying or withholding any document required to be produced or transmitted by him, shall be taken to be guilty of a contempt of the High

Court of Chancery (*b*), and shall be liable to be attached and committed by such Court, on summary application by the commissioners to the same Court or to any judge thereof, and shall pay such costs attending such contempt as the said Court or judge shall direct: Provided always, that the Court may at any time discharge, on such terms as it may deem just, any person attached or committed on any such application, or on any application made under section fourteen of the principal Act.

Sect. 9.

(*a*) See also sect. 14 of the Charit. Trusts Act, 1853, *ante*, and note (*a*) thereto.

(*b*) Now the High Court of Justice: Jud. Act, 1873, s. 16.

10. Where any parish or ecclesiastical district entitled to the benefit of a charity has or shall have been divided into separate parishes or ecclesiastical districts, and no apportionment of charities originally applicable to the parish or district so divided shall have been made by Parliament or other competent authority, the Board (*b*), in respect of all charities the gross annual income whereof does not for the time being exceed thirty pounds, may apportion the benefit of the charity between each new parish or district, or any portion thereof taken from the parish or district originally entitled to the whole benefit, and the remainder of such last-mentioned parish or district, in such manner and such proportions as, upon a consideration of the purposes of the charity, the population of each parish or district, and other circumstances, they may think fit, and may also apportion the principal endowments between such parishes or districts, if it be thought fit, and may appoint separate trustees of any part of the endowments.

Power to Board to apportion small parochial charities after division of parishes (*a*).

(*a*) See *ante*, p. 176. This section only applies where the income of the charity does not exceed the specified amount: *Att.-Gen. v. Love*, 33 Beav. 506.

Application.

The certificate of the Board is evidence of the amount of the income of the charity: sect. 11 of this Act, *post*.

Evidence of income.

And as to the notices required to be given prior to apportionment and the proceedings thereon, see sects. 13 and 14 of this Act, *post*.

Notices.

The apportionment of charities under this section has been rendered

Section

Sect. 10
(a), (b).

superseded by
Charit. Trusts
Act, 1860,
s. 2.

Apportion-
ment not
favoured.

obsolete by the general power of establishing schemes conferred by sect. 2 of the Charit. Trusts Act, 1860, *post*.

Apportionment is merely an application of the principle of *cy-près* (see *ante*, p. 174), and, where required, is now always provided for by means of a scheme.

The Charity Commissioners do not favour the apportionment of charities between the different parts of a parish, because population and circumstances vary so rapidly that fresh apportionments are constantly rendered necessary. It is found in practice that the most satisfactory way of dealing with these cases is to entrust the administration of the entire charity to a body of trustees representative of all parts of the parish, who can adapt the distribution of the income over the different parts of the beneficiary area to any variation of circumstances.

(b) The Charity Commissioners sitting as a Board: Charit. Trusts Act, 1853, s. 66, *ante*.

Evidence as
to the annual
income of any
such charity
not exceeding
30%.

11. The certificate of the Board, that according to their judgment the gross yearly income of any charity does not for the time being exceed thirty pounds, shall be sufficient evidence of the amount of such annual income for the purpose of determining the jurisdiction under the foregoing provision.

The Official
Trustees of
Charitable
Funds may be
empowered to
call for trans-
fers to them
of stock, &c.

12. Any Court or judge having jurisdiction (a) to order the transfer of stock in the public funds, or stock or shares of any public company, to the Official Trustees of Charitable Funds, shall have power also to authorize such trustees to call for a transfer of and to transfer such stock or shares, and may also order the payment to the same trustees of any principal monies of any charity (b), under the same circumstances in which the transfer of stock to them may now be ordered.

(a) Charitable Trusts Act, 1853, s. 51, *ante*. As to the official trustees of charitable funds, see note (a) to that section.

Powers exer-
ciseable by
Charity Com-
missioners.

The powers conferred by this section are exerciseable by the Charity Commissioners: Charit. Trusts Act, 1860, s. 2, *post*. See also sects. 22 and 37 of this Act, and sect. 4, sub-s. (2), of the Charit. Trusts Act, 1887, *post*.

Investment.

(b) Such moneys are to be paid to the account of the official trustees of charitable funds at the Bank of England and forthwith invested in the public funds: sect. 23 of this Act, *post*.

Notices to
be given of

13. No order for apportioning the benefits of any

charity shall be made by the Board until after such public notices shall have been given of the proposal to make the same as the Board may consider expedient for insuring publicity in each parish or district in which the charity is or ought to be applied, or among all persons interested therein, nor until after the expiration of one month from the publication of such notice; and every such notice shall contain (so far as conveniently may be) sufficient particulars of the proposed order to show the objects thereof, and shall prescribe a time within which any objections thereto may be stated or transmitted to the Board.

Sect. 13.

proposals to apportion any charities (a).

(a) See sect. 10 of this Act, *ante*.

14. All objections which may be made to any proposed order shall be considered by the Board, who may suspend the making thereof for further inquiry, or may modify the same, as may be found expedient; and a copy of every such order when made shall, in the case of any local charity, be deposited for the space of one month in some convenient place within the parish or one of the parishes or the district in which the charity is applicable, and also be open to inspection at the office of the Commissioners, and such publicity shall be given thereto among all persons interested in the charity as the Board shall consider expedient; or if the charity be not local, then a copy of such order shall be open to inspection at the office of the Commissioners, and public notice thereof shall be given in such manner as to the Board shall seem fit, and in cases where there is a special visitor, notice shall be given to him.

Board to consider objections to proposals (a).

Orders of apportionment to be open to inspection, &c.

(a) See sect. 10 of this Act, *ante*.

15. The secretary for the time being of the Board shall be a corporation sole by the name of "The Official Trustee of Charity Lands," for taking and holding charity lands, and by that name (instead of the name of

Secretary of Board shall be a corporation sole, by name of "The Official Trustee of

Sect. 15. "Treasurer of Public Charities" (a)) shall have perpetual succession; and all land (b), or estates or interests in land, now vested in the "Treasurer of Public Charities" by that name shall become, upon the passing of this Act, and by virtue thereof, vested in like manner and upon the same trusts in "The Official Trustee of Charity Lands," and all provisions of the principal Act which have reference to the Treasurer of Public Charities (c) shall operate as if the name of the "Official Trustee of Charity Lands" had been used therein instead of the name of "Treasurer of Public Charities."

Charity Lands;" and land vested in and provisions referring to treasurer of public charities shall vest in and refer to such official trustee.

(a) This was the name given by sect. 47 of the Charit. Trusts Act, 1853, *ante*. With regard to the official trustee of charity lands, see note (a) to sect. 48 of the Charit. Trusts Act, 1853, *ante*, pp. 511, 512.

(b) Defined by sect. 66 of the Charit. Trusts Act, 1853, *ante*.

(c) Sects. 48, 49 and 50, *ante*.

Power to acting trustees of charities to grant leases of lands vested in official trustee as if they were vested in themselves.

Covenants, &c. to be enforceable by and against them.

16. The acting trustees of every charity, or the majority of them, provided that such majority do not consist of less than three persons, shall have at law and in equity power to grant all such leases or tenancies of land belonging thereto, and vested in the Official Trustee of Charity Lands, as they would have power to grant in the due administration of the charity if the same land were legally vested in themselves; and all covenants, conditions, and remedies contained in or incident to any lease or tenancy so granted shall be enforceable by and against the trustees or persons acting in the administration of the charity for the time being, and their alienees or assigns, in like manner as if such lands had been legally vested in the trustees granting such lease or tenancy at the time of the execution thereof, and had legally remained in or had devolved to such trustees or administrators for the time being, their alienees or assigns, subject to the same lease or tenancy (a).

(a) With regard to leases of charity lands, see *ante*, pp. 257 *et seq.*, and sect. 21 of the Charit. Trusts Act, 1853, *ante*, and notes thereto. See, also, sect. 26 of the same Act, sects. 29, 38, and 39 of this Act, and sect. 12 of the Charit. Trusts Act, 1869.

17. *The Lord Chancellor may from time to time by writing under his hand appoint any persons to be, jointly with the secretary for the time being of the said Board, the Official Trustees of Charitable Funds, and remove any such trustees, and every such appointment or removal shall be published in the "London Gazette" (a).* **Sect. 17.**

Appoint-
ments
of Official
Trustees of
Charitable
Funds regu-
lated.

(a) Repealed by sect. 6 of the Charit. Trusts Act, 1887, *post*. Under sect. 4 of that Act such officers as the Board, with the approval of the Treasury, shall appoint, are the official trustees of charitable funds.

18. *The present (b) Official Trustees of Charitable Funds, and their successors, to be so appointed (b), shall have perpetual succession by the name of "The Official Trustees of Charitable Funds," and may hold by that name stock in the public funds, and stock and shares of any public company, securities, and monies, which shall respectively devolve to their successors, the Official Trustees of Charitable Funds for the time being, without transfer or assignment.*

Such trustees
to have per-
petual succe-
sion, and may
hold funds in
that name (a).

(a) With regard to the official trustees of charitable funds, see sect. 51 of Charit. Trusts Act, 1853, *ante*, and notes thereto.

(b) The words in italics are repealed by sect. 6 of the Charit. Trusts Act, 1887, *post*.

19. *All stock in the public funds vested in the joint names of Henry Morgan Vane, Thomas Hare, and Walker Skirrow, Esquires, the present Official Trustees of Charitable Funds, shall upon the passing of this Act be transferred by the Governor and Company of the Bank of England from their names to the account of the Official Trustees of Charitable Funds (a).*

Funds to vest
in the official
trustees for the
time being.

(a) Repealed by the Stat. Law Rev. Act, 1875.

20. *The Official Trustees of Charitable Funds shall, for the purposes of their trust, keep a banking account in their official name in the books of the Governor and Company of the Bank of England, and the secretary of the Board shall keep separate accounts of the monies held upon such account, and belonging to each separate charity (a).*

Official
trustees to
keep a bank-
ing account,
and secretary
to keep
separate
accounts for
each charity.

(a) The words in italics are repealed by sect. 6 of the Charit. Trusts Act,

Sect. 20
(a).

1887, *post*. The keeping of the banking account of, and the conduct of business by, the official trustees of charitable funds, are now governed by Treasury Regulations under sect. 4, sub-sect. (2), of the same Act. These regulations will be found in App. II. to this Book, *post*.

Mode of drawing on the banking account (a).

21. All orders for payment of any money held upon such banking account shall be signed by one at least of the Official Trustees of Charitable Funds, not being the secretary of the Board, and also by the secretary, and shall be countersigned by one of the Commissioners, or shall be otherwise signed or authenticated in such manner as the Lord Chancellor shall from time to time by order under his hand direct; and such orders shall be a sufficient authority to the bank paying the same for all such payments.

(a) See, now, Clause 4 of the Treasury Regulations, made under sect. 4, sub-s. (2), of the Charit. Trusts Act, 1887, printed in App. II. to this Book, *post*.

Trustees may transfer stock to official trustees.

22. Any trustee or other person may, on obtaining an order of the Board for the purpose, transfer any stock or pay any money to the Official Trustees of Charitable Funds in trust for any charity (a).

(a) As to the making of these orders, see Clause 4 of the Treasury Regulations under sect. 4, sub-sect. (2), of the Charit. Trusts Act, 1887, printed in App. II. to this Book, *post*. Forms of application for orders under this section will be found in the Charity Commission Forms, printed in App. II., Forms Nos. 15, 16.

As to payment and investment of principal monies directed to be paid to them (a).

23. All principal monies belonging to any charity directed to be paid to the Official Trustees of Charitable Funds (b) shall be paid to their account at the bank (c); and, subject to any order of the Court or judge or of the Board by which respectively the payment shall have been authorized, shall be forthwith invested in the public funds in the names of the Official Trustees of Charitable Funds, for the benefit of the charity to which they shall belong.

Investments held by official trustees.

(a) A statement of all the investments held by the official trustees of charitable funds appears in the annual reports of the Charity Commissioners. These show that the bulk of the property held by them is invested in the govern-

ment funds. Other investments, which are of comparatively insignificant amount, are not investments made by the official trustees, but investments transferred into their names and retained.

Sect. 23
(a), (b), (c).-

A few cases have been decided as to the meaning of the words "public funds," "government securities," &c.

Meaning of
"public
funds," &c.

"Public securities" is a wider expression than "government securities": see *Sampayo v. Gould*, 12 Sim. at p. 435, where Shadwell, V.-C., said, "This Court does not allow property to be invested in public securities which are not government securities."

"Government securities" includes Exchequer Bills (*Ex parte South Eastern Railway Co.*, 9 Jur. 650: see *contra*, *Ex parte Chaplin*, 3 Y. & C. Ex. 397; *Knott v. Cottee*, 16 Beav. 77; in *Matthews v. Brise*, 6 Beav. 239, 244, they were permitted temporarily), and formerly Navy 5 per Cents. (*Baud v. Fardell*, 7 De G. M. & G. 628); but not, of course, investments in foreign stocks or bonds: *Knott v. Cottee*, *supra*.

It has, however, been stated that under the present law trustees, having power to invest their trust funds upon government securities or upon Parliamentary stocks, funds or securities, are empowered to invest them in any investments, in which cash under the control of the Court may be invested: 23 & 24 Vict. c. 38, s. 11. See *ante*, p. 275.

Present law as
to trustees'
investments.

Investments on mortgage are also authorized by statute: 33 & 34 Vict. c. 34, *ante*, p. 277.

The present practice is that, in the absence of special circumstances, charity funds in the hands of the official trustees of charitable funds are invested in 2½ per Cent. Consolidated Stock. But the question of investment is under the consideration of the commissioners in connection with the investments in which cash under the control of the Court may be invested under R. S. C. 1883, Ord. XXII. r. 17, which came into force on the 26th of November, 1888, and in connection also with the Bill now before Parliament for regulating trustees' investments.

Practice of
Charity Com-
missioners.

(b) See sects. 12 and 22 of this Act, *ante*, and sect. 2 of the Charit. Trusts Act, 1860, *post*.

(c) See sects. 20 and 21 of this Act, *ante*.

24. The dividends arising from all stock in the public funds standing in the name of the Official Trustees of Charitable Funds shall from time to time be received by the Governor and Company of the Bank of England, under the authority of this Act, for the credit of the said official trustees, and shall be placed to their banking account accordingly; and all dividends and interest arising from any other stock, shares, or securities standing in the name of or held by the Official Trustees of Charitable Funds shall be paid only to the Governor and Company of the Bank of England for the account of the same trustees; and the said trustees shall from time to time

All dividends
and interest
due to the
Official Trus-
tees of Charit-
able Funds to
be received by
the Bank of
England
for their
account (a).

Sect. 24. *execute to the said governor and company all such powers as shall be found necessary for enabling them to receive and give effectual discharges for the last-mentioned dividends and interest (b).*

(a) The matters dealt with by this section are now governed by Clause 3 of the Treasury Regulations, made under sect. 4 of the Charit. Trusts Act, 1887, *post*. These regulations will be found in App. II. to this Book, *post*.

As to the receipt of arrears of dividends, see Charit. Trusts Act, 1860, s. 12, *post*. And as to the payment of dividends to the trustees of the charity, see Charit. Trusts Act, 1853, s. 52, *ante*.

(b) The words in italics are repealed by the Charit. Trusts Act, 1887, s. 6, *post*. A regulation under sect. 4 of that Act is a complete indemnity to the bank.

For the regulation of transfers and payments to or by the official trustees (a).

25. No transfer of any stock, shares, or securities shall be made to the Official Trustees of Charitable Funds, nor shall any money, other than the dividends or interest of any such stock, shares, or securities as aforesaid, be paid to their account, except in pursuance of an order of the Court of Chancery, or of some judge thereof, or of a *District Court of Bankruptcy* or (b) County Court, or of the Board; and no transfer of any such stock, shares, or securities shall be made by the official trustees, except under the order of such Court or judge, or under the order of the Board signed by two Commissioners, or authenticated in such manner as the Lord Chancellor from time to time by any order under his hand direct(c); and no transfer to or by the official trustees shall be permitted by the Governor and Company of the Bank of England or any other company contrary to this provision.

(a) See, generally, as to the official trustees of charitable funds, note (a) to sect. 51 of the Charit. Trusts Act, 1853, *ante*, p. 514.

(b) The words in italics are repealed by the Stat. Law Rev. Act, 1875, District Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

(c) See now the Treasury Regulations made under sect. 4, sub-sect. (2) of the Charit. Trusts Act, 1887, printed in App. II. to this Book, *post*.

Copies of orders affecting the account of the official trustees to be sent to the Board.

26. Copies of all orders made by any Court or judge for any transfer, deposit, or payment of stock, shares, securities, or monies to or by the Official Trustees of Charitable Funds shall be forthwith transmitted to the Board by the parties obtaining such orders.

27. Every order made under the principal Act (*b*) or this Act (*c*), requiring or authorizing the transfer, payment, or deposit of any stock, shares, securities, or monies to or with the trustees of any charity or the Official Trustees of Charitable Funds, or conferring a right to call for or to make such transfer, shall be a complete indemnity to the Governor and Company of the Bank of England and all companies and persons for any act done pursuant to such order; and the said governor and company and other companies and persons shall be required to give effect or to conform to every such order, and it shall not be necessary for them to inquire concerning the propriety of such order, or the jurisdiction of the Court or judge or the Board to make the same.

Sect. 27.

Indemnity to the Bank and others for acting on orders as to transfers and payments (*a*).

(*a*) Orders made by the Board under the Charit. Trusts Act, 1860, s. 23, and regulations and orders made under sect. 4 of the Charit. Trusts Act, 1887, are a similar indemnity: see sub-s. (4) of that section, *post*.

(*b*) Charit. Trusts Act, 1853, s. 51, *ante*.

(*c*) Sects. 12, 22, 37.

28. All dividends arising from any stock in the public funds standing in the name of the Official Trustees of Charitable Funds, and which shall be certified by the Board to the Governor and Company of the Bank of England to be exempt from the property or income tax, shall be paid or carried to the banking account of the official trustees without any deduction of such tax; and all dividends arising from any stock in the public funds standing in any other names or name, and which the Board shall certify to the Governor and Company of the Bank of England to be subject only to charitable trusts, and to be exempt from such tax, shall be paid without any deduction thereof (*a*).

Dividends on stock in name of official trustees, or in any other names, certified by Board to be exempt from income tax, shall be paid free from such tax.

(*a*) See sect. 24 of this Act, *ante*. As to how far charitable funds are exempt from income tax, see *ante*, pp. 360—366.

29. It shall not be lawful for the trustees or persons acting in the administration of any charity to make or grant, otherwise than with the express authority of Parliament (*b*), under any Act already passed or which

Restrictions of sales, charges, and leases of charity estates (*a*).

Bishop of Bangor v Barry, 10 H 26, 3277.

Sect. 29.

may hereafter be passed, or of a Court or judge of competent jurisdiction (c), or according to a scheme legally established, or with the approval of the Board, any sale (d), mortgage (e), or charge of the charity estate, or any lease thereof in reversion after more than three years of any existing term, or for any term of life, or in consideration wholly or in part of any fine, or for any term of years exceeding twenty-one years (f).

Property not charitable.

(a) This section does not, of course, apply in the case of property not held upon a charitable trust at all: *Finnis and Young for Forbes and Pochin* (No. 1), 24 Ch. D. 587. With regard to that case, however, it is difficult to see how, so far as it decided that the property in question was not charitable, it escapes from the dilemma that a perpetual trust is either charitable or void for remoteness: see *ante*, p. 57.

Exemptions in Charit. Trusts Act, 1860, s. 2.

The section does not apply to cases falling within the exemptions of sect. 62 of the Charit. Trusts Act, 1853: *Royal Society of London v. Thompson*, 17 Ch. D. 407; *Finnis and Young for Forbes and Pochin* (No. 2), 24 Ch. D. 591.

(b) Consequently sales under the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), are not within the section: see *ante*, p. 256.

(c) See Charit. Trusts Act, 1853, ss. 28, 29, and 32, *ante*.

(d) As to sales, see *ante*, pp. 250 *et seq.*, and sect. 24 of the Charit. Trusts Act, 1853, *ante*, and note (a) thereto.

(e) As to mortgages, see *ante*, pp. 271, 272, and note (c) to sect. 21 of the Charit. Trusts Act, 1853, *ante*, p. 486.

(f) As to leases, see *ante*, pp. 257 *et seq.*, and sect. 21 of the Charit. Trusts Act, 1853, *ante*, p. 484, and note (a) thereto.

Lease in pursuance of contract before passing of Act.

A lease coming within this section, if made in pursuance of a valid contract in existence before the Act came into operation, might be granted without the consent of the commissioners: *Moore v. Clench*, 1 Ch. D. 447, *ante*, p. 265.

It is considered doubtful whether the section applies to a lease granted in consideration of the surrender of an existing lease, although this is equally objectionable with a reversionary lease. It was proposed to remove this doubt by sect. 16 of the Charit. Trusts Bill, 1883: see as to this, *ante*, p. 452.

Board shall order sinking funds to be provided for paying off mortgages of charity estates (a).

30. *So much of section twenty-one (b) of the principal Act as requires a compulsory provision to be inserted in every mortgage for the payment of the principal money borrowed by annual instalments, and for the redemption and reconveyance of the mortgaged estates within the period of not more than thirty years, is hereby repealed; but (c) the Board authorizing any mortgage to be made of any charity estate shall make such provisions, by the same or any other order, as to them may seem necessary, for directing the trustees or persons administering the charity to discharge*

the principal debt or any part thereof by such yearly or other instalments within thirty years from the date of the security as to the said Board may seem fit, or to form an accumulation or sinking fund out of the income of the charity for discharging the principal debt or any portion thereof within the same period, and shall give directions as to the investment and accumulation of such fund, and the trustees for the time being, or persons administering the charity, shall carry such order into effect. Sect. 30.

(a) The Board may, under sect. 21 of Charit. Trusts Act, 1853, *ante*, Mortgages. p. 484, authorize the trustees to raise money on mortgage for improvements of charity estates, and, under sect. 15 of Charit. Trusts Act, 1860, for any other beneficial purpose consistent with the intention of the foundation.

As to the mode of providing a sinking fund, see note (c) to sect. 21 of the Charit. Trusts Act, 1853, *ante*, p. 487.

(b) *Ante*, p. 484.

(c) The words in italics were repealed by the Stat. Law Rev. Act, 1875.

31. The twenty-third section (a) of the principal Act shall extend to authorize a compromise or adjustment of any claim, demand, or cause of suit against any charity, or the trustees or administrators thereof, and the order of the Board in relation thereto shall have the like effect as in the case of any compromise or adjustment for which provision is made by the said section. Extension of power of Board as to compromise of claims under 16 & 17 Vict. c. 137, s. 23.

(a) *Ante*, p. 488, and see note thereto.

32. The Board (b) may authorize the application of any funds belonging to any charity in payments for equality of exchange or partition, or in payment of any expenses incident thereto, or may authorize the trustees to raise any money for such purposes by mortgage of any land acquired on such exchange or partition, or belonging to the charity (c). Board may authorize payments for equality of exchange or partition (a), and mortgages to raise money for such payments.

(a) As to the power of the Board to authorize exchanges of charity lands, see Charit. Trusts Act, 1853, s. 24, *ante*, and see also *ante*, pp. 267—270. Exchanges.

The Board have no express power to authorize partitions. The present section and sect. 34 of this Act, *infra*, are the only sections in the Charit. Trusts Acts in which a reference to partitions is made. Partitions are, as a rule, effected by the Land Commissioners: see *ante*, p. 270. Partitions.

An order authorizing a partition may, however, be made by way of Partition by

Sect. 32
(a), (b), (c).
way of com-
promise.

compromise and adjustment of claims by and against a charity under the powers conferred by sect. 23 of the Charit. Trusts Act, 1853, and sect. 31 of the present Act, *ante*. An order of this kind is, however, very rare.

(b) The Charity Commissioners sitting as a Board: Charit. Trusts Act, 1853, s. 66, *ante*.

(c) With regard to mortgages, see notes (b) and (c) to sect. 21 of the Charit. Trusts Act, 1853, *ante*, pp. 486, 487.

Power to
ascertain the
specific parts
of lands
charged with
small rents to
charities
which shall
be charged
with such
rents (a).

33. Where there shall be uncertainty as to the specific part of any lands out of which any rent, annuity, or other periodical payment, not exceeding the yearly sum of ten pounds, charged upon some part of the same lands, for the benefit of a charity, shall be payable, it shall be lawful for the Board (b), upon the application of the trustees (c) or persons acting in the administration of the charity, and with the consent of the persons interested, according to the aforesaid definition of "persons interested" (d) in the same lands, to determine by their order the land charged with such rent, annuity, or other periodical payment, which shall thenceforth stand charged with such rent, annuity, or periodical payment accordingly, to the exoneration of the residue of such lands therefrom.

(a) See also the next section, and s. 25 of the Charit. Trusts Act, 1853, *ante*, under which the Board may authorize the redemption of rent-charges.

(b) The Charity Commissioners sitting as a Board: Charit. Trusts Act, 1853, s. 66, *ante*.

(c) As to the mode of application, see Charit. Trusts Act, 1869, s. 5, *post*.

(d) The definition here referred to was contained in certain sections which were struck out of the Bill in its passage through Parliament.

Expenses of
orders for
exchanges
or partitions,
or orders
determining
the lands
charged with
rents.

34. The expenses incident to the application for and procuring of any such order of exchange (a) or partition (b), or order determining the land charged with any rent, annuity, or periodical payment (c), shall be paid by the trustees or administrators of the charity, or by the other parties to such transactions, or by both, as the Board may direct.

(a) See sect. 24 of the Charit. Trusts Act, 1853, *ante*; and see also *ante*, pp. 267—270.

(b) See note (a) to sect. 32 of this Act, *ante*. The Act makes no provision for an order of partition. The reference is to a section which was struck out of the Bill in its passage through Parliament.

(c) See the last section.

35. Any incorporated charity, or the trustees of any charity, whether incorporated or not, may, with the consent of the Board, invest money arising from any sale (a) of land belonging to the charity, or received by way of equality of exchange or partition, in the purchase of land, and may hold such land, or any land acquired by way of exchange or partition, for the benefit of such charity, without any licence in mortmain (b).

Sect. 35.

Incorporated charities and trustees for charities may re-invest in land monies arising from sale, or received on exchanges, &c.

(a) Charit. Trusts Act, 1853, s. 24, *ante*.

(b) The conveyances must, however, satisfy the requirements of Part II. of the Mortm. and Charit. Uses Act, 1888, *ante*, pp. 386 *et seq.*

36. All orders of the Board for the investment of money coming to any charity or the trustees thereof on any sale, exchange, or partition (a) shall be carried into effect by the trustees or persons administering the charity; and all monies which the Board shall order to be provided out of any income or property of a charity for the payment of the costs (b) of any such transaction shall be provided or raised by the trustees or administrators of the charity, and applied accordingly.

Orders of Board for investments and for providing monies for costs, to be carried into effect by trustees.

(a) See sects. 24 and 25 of the Charit. Trusts Act, 1853, *ante*.

(b) See sects. 32 and 34 of this Act, *ante*.

37. It shall be lawful for the Board to authorize or order and direct the Official Trustee of Charity Lands and the Official Trustees of Charitable Funds respectively to convey lands, and to assign, transfer, and pay over stocks, funds, monies, and securities, as the Board shall think expedient (a).

Board may direct official trustees of lands and funds to convey lands, transfer stocks, &c.

(a) As to the official trustee of charity lands, see note (a) to sect. 48 of the Charit. Trusts Act, 1853 (*ante*, pp. 511, 512); and as to the official trustees of charitable funds, see note (a) to sect. 51 of the same Act, *ante*, p. 514.

Orders for transfer or payment of stock or money are now governed by Treasury Regulations made under sect. 4, sub-s. (2), of the Charit. Trusts Act, 1887, printed in App. II. to this Book, *post*.

With regard to the concurrence of the official trustee of charity lands, see *ante*, pp. 486, 491.

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Leases, &c.
authorized by
Board to be
valid, not-
withstanding
13 Eliz. c. 10;
14 Eliz. cc. 11,
14; 18 Eliz.
cc. 6, 11; 39
Eliz. c. 5; 21
Jac. I. c. 1,
or other dis-
abling Acts.

38. All leases, sales, exchanges, partitions, and transactions authorized by the Board under the principal Act or this Act shall be valid and effectual^(a), notwithstanding the Act of the thirteenth year of the reign of Queen Elizabeth, chapter ten, the Acts of the fourteenth year of the same Queen, chapters eleven and fourteen, the Acts of the eighteenth year of the same Queen, chapters six and eleven, the Act of the thirty-ninth year of the same Queen, chapter five, and the Act of the twenty-first year of the reign of King James the First, chapter one, or any disabling Act^(b) applicable to the charity the estates whereof shall be the subject of any such transaction.

(a) See also Charit. Trusts Act, 1853, s. 26, *ante*. See as to leases, sect. 21; and as to sales and exchanges, sect. 24 of the Charit. Trusts Act, 1853, *ante*. And as to partitions, see note (a) to sect. 32 of this Act, *ante*, p. 549.

Disabling
Acts.

(b) With regard to these disabling Acts, see *ante*, pp. 262 *et seq.*, and cases there cited.

The Act 2 Will. IV. c. 42 (mentioned in the preamble to the Allotments Extension Act, 1882, *post*), which by sect. 1 requires trustees of allotments within the Act, together with the churchwardens and overseers of the poor, to let portions of any such allotments to such industrious cottagers as the section defines who may apply for the same, is not a disabling Act, for the powers given by it may subsist side by side with those given to the Charity Commissioners by the Charit. Trusts Acts: *Parish of Sutton to Church*, 26 Ch. D. at p. 177. Nor does the Allotments Extension Act, 1882 (45 & 46 Vict. c. 80), deprive the Charity Commissioners of any powers conferred upon them by the Charit. Trusts Acts: *ibid.* at p. 178.

Board may
approve
schemes for
letting charit-
able property.

39. It shall be lawful for the Board to prepare, and under their seal to approve of, any scheme for the letting of the property or any part of the property of any charity; and all leases granted by any trustees or persons acting in the management of any charity, pursuant to or in conformity with such scheme, shall be valid^(a).

(a) With regard to leases, see *ante*, pp. 265, 266, and sect. 21 of the Charit. Trusts Act, 1853, *ante*.

Power to
Board to refer
bills of costs

40. The Board may order the bill of costs or charges claimed by any attorney or solicitor on account of

business conducted or transacted by him on behalf of any charity, or the trustees thereof, to be examined and taxed by the taxing masters of the Court of Chancery, or by the proper taxing officers of any of the superior Courts at Westminster (*b*), who shall proceed to examine and tax the same bill accordingly; and if the same shall be reduced upon such taxation by the amount of one-sixth part or more of the amount thereof, the costs of the taxation shall be paid by such attorney or solicitor, but otherwise out of the funds of the charity by the trustees thereof; and the Board may, after being satisfied as to any bill that it contains exorbitant charges, order any such bill to be so taxed, notwithstanding that the same may have been paid by the trustees of the charity at any period not more than six calendar months previously to such order; and any amount taxed off any such paid bill shall be a debt due from the attorney or solicitor to the trustees of the charity, and shall be forthwith paid by him to such trustees accordingly (*a*).

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in charity matters to taxation (*a*).

Costs of taxation.

Taxation after payment.

Recovery of amount taxed off.

(*a*) Although this section does not expressly authorize the commissioners themselves to tax bills of costs, yet it produces the result of practically conferring that power upon them. Taxation of costs.

The practice of the commissioners is to examine a bill of costs, and to make such deductions as they think right. These are usually acquiesced in, or an explanation is given which may result in the restoration of the items taxed off. If the solicitor refuses to acquiesce, the bill is referred to taxation. In some cases, where taxation is obviously the proper course, the bill is referred to taxation in the first instance.

(*b*) Now the masters of the Supreme Court acting as taxing masters: B. S. C. 1883, Ord. LXI. r. 3.

41. Section twenty-seven (*a*) of "The Charitable Trusts Act, 1853," shall be construed and operate as if the words "and the trustees of the charity shall be legally authorized to purchase and hold such land" had been omitted therefrom; and incorporated trustees of any charity shall be competent to purchase and hold lands for the purposes mentioned in the same section without licence in mortmain (*b*).

Amendment of sect. 27 of 16 & 17 Vict. c. 137.

Incorporated trustees may purchase lands under that section without licence.

(*a*) *Ante*, p. 493.

Sect. 41

(b).

(b) As in the case of purchases under sect. 35 of this Act, so also in this case the conveyance must satisfy the requirements of Part II. of the Mortm. and Charit. Uses Act, 1888.

Deeds, &c.
relating to
charities may
be enrolled at
the office, and
copies to be
evidence.

42. Any deed, will, or document relating to any charity may be enrolled by the Board in books to be provided and kept by them for that purpose at their office, and a copy of any such deed, will, or document made from such books, and certified under the hand of the secretary (a) or one of the Commissioners, shall be received as evidence of the contents of the same deed, will, or document.

(a) Or any officer authorized by the Board to act on behalf of the secretary: Charit. Trusts Act, 1887, s. 3, *post*.

Construction
of sects. 55
and 59 of
16 & 17 Vict.
c. 137.

43. The fifty-fifth (a) and fifty-ninth (b) sections of the principal Act shall be construed and operate as if the words "the office of the Board" had been inserted therein in the place of the words "the office in London of the Registrar of County Courts Judgments."

(a) *Ante*, p. 516.

(b) *Ante*, p. 519.

Provisions as
to the annual
returns of
accounts by
trustees of
charities.

44. *Section sixty-one of "The Charitable Trusts Act, 1853," except so much thereof as enacts that the trustees or persons acting in the administration of every charity shall, in books to be kept by them for that purpose, regularly enter or cause to be entered full and true accounts of all money received and paid respectively on account of such charity, shall be repealed as to all accounts which such trustees or administrators shall not have been bound to render before the passing of this Act; and (a) the trustees or administrators of every charity shall, on or before the twenty-fifth day of March, one thousand eight hundred and fifty-six, prepare and make out and transmit to the Board an account of the endowments then belonging to the charity, showing in the case of realty not in hand the manner in which the same is let or occupied, and in the case of personalty the*

Copies of
accounts to be
sent to
Commis-
sioners, and
of parochial
accounts to
church-
wardens, &c.,

existing investment or employment thereof, and in what names such investments are made; and such trustees or administrators shall also on or before the twenty-fifth day of March next after the acquisition of any endowment not included in the foregoing account prepare and make out, in like manner, and transmit to the Board, a similar account of such last-mentioned endowment, and in case of any alienation, or charge, or transfer of any real or personal estate of the charity, shall on or before the twenty-fifth day of March then next following transmit to the Board an account of such alienation, charge, or transfer, and such trustees or administrators shall also, on or before the twenty-fifth day of March in every year, or such other day as may be fixed by the Board, or as may have been already fixed for rendering the accounts thereof required by the principal Act, prepare and make out the following accounts in relation thereto; (that is to say,)

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and such
copies to be
open to
inspection.

- (1.) An account of the gross income arising from the endowment, or which ought to have arisen therefrom during the year ending on the thirty-first day of December then last, or on such other day as may have been appointed for this purpose by the Board :
- (2.) An account of all balances in hand at the commencement of the year, and of all moneys received during the same year on account of the charity :
- (3.) An account for the same period of all payments :
- (4.) An account of all monies owing to or from the charity, so far as conveniently may be :

which accounts shall be certified under the hand of one or more of the said trustees or administrators, and shall be audited by the auditor of the charity, if any; and the said trustees or administrators shall, within fourteen days after the day appointed for making out such accounts, deliver or transmit a copy thereof to the Commissioners at their office in London, and in the case of parochial

Sect. 44. charities shall deliver another copy thereof to the churchwarden or churchwardens of the parish or parishes with which the objects of such charities are identified, who shall present the same at the next general meeting of the vestry of such parishes, and insert a copy thereof in the minutes of the vestry book; and every such copy shall be open to the inspection of all persons at all seasonable hours, subject to such regulations as to the said Board may seem fit; and any person may require a copy of every such account, or of any part thereof, on paying therefor after the rate of twopence for every seventy-two words or figures.

(a) The words in italics were repealed by the Stat. Law Rev. Act, 1875. The accounts of trustees are regulated by an order of the Board, under the next section, made on the 29th of July, 1884. This order, and the forms of statements of accounts issued thereunder, will be found in App. II. to this Book, *post*.

Board may make orders as to delivery and forms of accounts.

45. The Board may from time to time make such orders as they may think fit in relation to the delivery or transmission of the said accounts, and the forms of such accounts, and such orders shall be executed by all trustees and persons from whom the accounts to which they may relate are required (a).

(a) See note (a) to the last section.

Application of sect. 64 of 16 & 17 Vict. c. 137.

46. The sixty-fourth section (a) of the principal Act shall apply as well to members of any charity within the operation of that Act as to members of any charity exempted from the operation thereof.

(a) *Ante*, p. 529.

This Act not to apply to cases excepted by 16 & 17 Vict. c. 137, s. 62.

47. *Neither this Act nor the principal Act shall, until the first day of September one thousand eight hundred and fifty-six, extend or be in any manner applied to charities or institutions the funds or income of which are applicable exclusively for the benefit of persons of the Roman Catholic persuasion, and which are under the superintendence and control of persons*

of that persuasion(a), nor shall anything in this Act extend to any of the cases which by the sixty-second section (b) of the principal Act are excepted from the operation thereof. Sect. 47.

(a) The words in italics were repealed by the Stat. Law Rev. Act, 1875. Roman Catholic charities are now subject to the Charit. Trusts Acts: see note (c) to sect. 62 of Charit. Trusts Act, 1853, *ante*.

(b) *Ante*, p. 522.

48. In the construction of the principal Act and this Act the word "charity" (a) shall include every institution in England or Wales endowed for charitable purposes, but shall not include any charity or institution expressly exempted from the operation of the Act of 1853 (b), and words applying to any person or individual shall apply also to a corporation, whether sole or aggregate. As to the term "charity."
"Person" to include "corporation."

(a) "Charity" is also defined by sect. 66 of the Charit. Trusts Act, 1853. See note (c) to that section, *ante*, and cases there cited.

(b) See sect. 62 of that Act and *Royal Society of London v. Thompson*, 17 Ch. D. 407, and *Finnis and Young to Forbes and Pochin*, 24 Ch. D. 591, cited in note (d) to that section, from which it appears that a charity which has no endowment is not within the Charit. Trusts Acts.

49. Nothing in this Act or in the principal Act contained shall extend to the colleges of Eton and Winchester, or either of them (a). Acts not to extend to Eton or Winchester.

(a) For other exemptions, see sect. 62 of the Charit. Trusts Act, 1853, *ante*.

50. This Act may be cited as "The Charitable Trusts Amendment Act, 1855." Short title.

THE CHARITABLE TRUSTS ACT, 1860.

23 & 24 VICT. c. 136.

*An Act to amend the Law relating to the Administration of
Endowed Charities.* [28th August, 1860.]

WHEREAS it is expedient to provide increased and inexpensive facilities for the administration of endowed charities: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Acts to be
construed
together, &c.

1. "The Charitable Trusts Act, 1853," and "The Charitable Trusts Amendment Act, 1855," and this Act, shall be construed together as one Act, and any provisions of the said former Acts inconsistent with this Act are hereby repealed (*a*).

(*a*) All the Charit. Trusts Acts are construed together as one Act: see note (*a*) to sect. 1 of the Charit. Trusts Act, 1853, *ante*.

Certain ad-
ministrative
powers to be
exercisable by
the Board of
Charity
Commis-
sioners (*a*).

2. The Board of Charity Commissioners for England and Wales, subject to the restrictions(*b*) and rights of appeal(*c*) hereinafter provided, shall have power from time to time, upon the application of any person or persons who, under the forty-third section of "The Charitable Trusts Act, 1853"(*d*), might be authorized to apply to any judge or Court for the like purposes, to make such effectual orders as may now be made by any judge of the Court of Chancery sitting at Chambers(*e*), or by any County Court(*f*) or *District Court of Bank-*

ruptcy (*g*), for the appointment or removal of trustees of any charity (*h*), or for the removal of any schoolmaster or mistress or other officer thereof (*i*), or for or relating to the assurance, transfer, payment, or vesting of any real or personal estate belonging thereto (*j*), or entitling the Official Trustees of Charitable Funds, or any other trustees, to call for a transfer of (*k*) and to transfer any stock belonging to such estate, or for the establishment of any scheme for the administration of any such charity (*l*).

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(*a*) The jurisdiction of the commissioners under this section is not impaired by reason of similar powers, to be exerciseable only with the sanction of the Court, having been given by a private Act or an order of the Court: Charit. Trusts Act, 1862, s. 1, *post*.

Powers.

By sect. 15 of the Charit. Trusts Act, 1869, *post*, the power of making orders under this section as to the appointment or removal of charity trustees, the vesting of property or the establishment of schemes, is extended to buildings registered as places of meeting for religious worship; but the application must in every case be made by the trustees.

Places of worship.

By the Roman Catholic Charities Act, 1860, s. 1, *post*, the jurisdiction conferred by this section is extended to apportioning Roman Catholic charities partly applicable to superstitious uses, and applying such part to lawful charitable trusts.

Roman Catholic charities.

By the Allotments Extension Act, 1882, s. 14, *post*, it is provided that, by every scheme made after the passing of that Act relating to a charity, part of the endowment of which consists of land other than buildings, the charity trustees shall be authorized to set apart portions of the land for allotments.

Allotments.

The jurisdiction of the Charity Commissioners is, however, subject to certain restrictions:

Restrictions on jurisdiction of commissioners.

Notice of the intention to make the order must be given to the charity trustees, except such as have been privy to the application: sect. 3 of this Act.

If the income of the charity is 50*l*. or upwards, the jurisdiction can only be exercised on the application of the trustees or a majority of them: sect. 4.

The commissioners are not bound to exercise jurisdiction over contentious cases: sect. 5.

In the case of the appointment or removal of a trustee, or the establishment of a scheme, a month's public notice of the proposal to make the order must be given. And in the case of the removal of a schoolmaster or schoolmistress, a month's notice of the proposed order must also be given to him or her: sect. 6.

The Board may not make an order removing a trustee on the ground only of his religious belief: sect. 4.

Every order made under this section shows, on the face of it, that the requirements of the Act necessary to confer jurisdiction have been complied with.

Orders.

The recitals state by whom the application to the Board was made,

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(a).

and if it was not made by all the trustees, then that notice has been sent to such of them as were not privy to the application (sect. 3), and whether the income of the charity does or does not exceed 50*l.* (sect. 4). An order for the appointment of new trustees, or the establishment of a scheme, also recites that notice of the intention to make the order was published more than one calendar month previously (sect. 6), and that no notice of any objection has been received, or that the objections received have been considered and are insufficient.

Forms of ap-
plication.

Forms of application to the Charity Commissioners, together with the instructions for application issued by the commissioners, will be found in App. II., Charity Commission Forms, Nos. 18, 19 and 20, *post*.

Application
by trustees
not enter-
tained till
accounts
furnished.

An application by or on behalf of the trustees or administrators of a charity is not entertained unless and until proper accounts relating to the charity have been furnished for at least the three preceding years.

Appointment of Trustees.

Consent to
act.

Persons proposed to be appointed new trustees are required to signify in writing to the Board their willingness to act in the trust, and this is stated in the order of appointment.

Trustees
appointed
notwith-
standing
existence
of power
capable of
exercise.

Appointments of new trustees are frequently made, notwithstanding that there is in existence a power of appointment capable of being exercised. This differs from the rule adopted by the Court: see *ante*, p. 186. The superior cheapness of appointments of trustees by the Board is considered by the commissioners to be a sufficient reason for the substitution of an appointment by them for an appointment under the instrument of foundation.

Relationship.

Relationship among trustees is held by the commissioners to be a valid objection. It is found in practice that objection is frequently taken to the predominance in a body of trustees of the influence of a particular family. The policy of the Charity Commissioners has consequently been to discourage the appointment of more than one, or at the most two, trustees of the same family: cf. *ante*, p. 191.

Appointment
and removal
of trustees
simpliciter.

The jurisdiction to appoint and remove trustees expressly conferred by this section authorizes the appointment or removal of a trustee *simpliciter*.

Appointment
of trustees
combined
with other
relief.

It frequently happens, however, that besides the mere appointment of a trustee some change requires to be made in the constitution, character, or mode of election of the trustees. Where this is the case, the order must be made under the jurisdiction to establish a scheme. Simple provisions of this kind will be found in Scheme No. I. in App. II., *post*.

Co-optative
and represen-
tative trus-
tees.

The older charities, with rare exceptions, were in the hands of a limited number of co-optative trustees without any representative element, or in the hands of *ex officio* trustees, such as the vicar or churchwardens of the parish: Rep. of Sel. Committee of 1884, on the Charit. Trusts Act, p. ix.

Recommen-
dation of
Schools
Inquiry Com-
mission.

The Schools Inquiry Commissioners, in 1867 (see Rep. vol. i. p. 645), recommended that in constituting trustees or governors of schools the principle of representation should be largely introduced.

Representa-
tive trustees in
End. Schools
schemes.

Acting upon this recommendation, the Endowed Schools Commissioners, in the first instance, and since the transfer of their powers to the Charity Commissioners, the Charity Commissioners have, in framing schemes under the Endowed Schools Acts, provided for the introduction of a representative element in the body of governors constituted by the scheme.

In general
charities.

Of late years the attention of Parliament has been frequently directed to

the question of introducing a representative element into the administration of charities generally, and considerable pressure has been put upon the Charity Commissioners by questions and motions in the House of Commons to provide for the presence of a representative element in all bodies of trustees reconstituted by their schemes.

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(a).

The Charity Commissioners have acted in accordance with this view. In framing a new scheme they usually greatly enlarge the number of trustees, and require that a considerable number of them shall be representative. This practice was approved by the Select Committee of 1884 (Rep. p. ix).

It is impossible to lay down a fixed rule as to the interests of which representative trustees are provided. It may, however, be said that generally they represent the ratepayers of the parish or place in which the benefit of the charity is distributed, they having a considerable interest in its proper administration.

The scheme may provide that representative trustees shall be appointed either directly by the parishioners or by a vestry or local board, or other popularly-elected body. In the case of very small charities it is sometimes considered sufficient to rely upon the introduction of overseers or guardians of the poor, or even of churchwardens, as a sufficient recognition of the representative principle in the constitution of the body of trustees.

Appointment
of representa-
tive trustees.

The expense of an election of representative trustees, if contested, is sometimes serious, and this frequently influences the action of the commissioners.

Expense.

In addition to the representative trustees, *ex officio* and co-optative trustees are also commonly provided for. The principle of co-optation, by which a certain number of the trustees consist of persons elected by the existing body of trustees, is found to secure the services of many persons who, though specially fitted to act in the administration of the charity, are nevertheless not willing to compete in an election of representative trustees.

Co-optative
trustees, &c.

The method of constituting a body of trustees will be best comprehended by a perusal of the clauses relating to trustees in Schemes Nos. I., II., V., and VIII. in App. II. to this Book. These will also show the manner in which the appointment of new trustees is provided for.

General con-
stitution of
bodies of
trustees.

An order appointing a new trustee, whether directly or by means of a scheme, requires a stamp of 10s., and an order conveying or transferring property for the purpose of effectuating the appointment requires a further stamp of the like amount. See *ante*, p. 360.

Stamp.

See, as to the exercise of their discretion by the Charity Commissioners in appointing trustees, *Re Burnham National Schools*, L. R. 17 Eq. 241.

Schemes.

Schemes are so various in their character that it would be impossible to enter into details with regard to them. Some typical forms of schemes are printed in App. II., *post*.

Variety of
schemes.

Subject to the restrictions that the trusts of a charity cannot be altered except within the limits permitted by the doctrine of *cy-près* (see *ante*, pp. 136 *et seq.*), and that schemes are not established with regard to charitable trusts created by statute (cf. *ante*, pp. 89 *et seq.*), there is no limit to the directions which may be given in relation to a charity estate by means of a scheme. The scheme may effect the entire reconstitution of the charity, or it may be confined to the accomplishment of a particular, even temporary,

Limitations
to power of
establishing.

Sect. 2 (a).	object. Instances have been already given where powers omitted to be given by these Acts, or imperfectly given, are brought in under or supplemented by the authority to make schemes. See <i>ante</i> , pp. 494, 539, 540.
Alteration of schemes.	As the commissioners have, under this section, the same powers as a judge at chambers, they can at any time alter a scheme, whether made by themselves or by the Court, and substitute a new scheme in its place.
Charity established by statute.	It has been stated (<i>ante</i> , pp. 89 <i>et seq.</i>) that the Court has no jurisdiction to alter a scheme established by Act of Parliament; and it is at least doubtful whether it has such jurisdiction, even if the statute has become effete, and incapable of further operation (<i>ante</i> , pp. 91, 92).
	The powers of the Charity Commissioners are similar in extent to those of the Court, and whatever incapacity attaches to the Court attaches also to the commissioners. No doubt they, like the Court (<i>ante</i> , p. 90), have jurisdiction to interfere in respect of matters left unprovided for by the scheme established by statute; but this power is of little practical value, because, as a rule, the Act contains in a schedule a scheme dealing with the most minute details of administration.
	In many recent Acts of this kind a provision has been expressly inserted prescribing that alterations may be made by the Court or the Charity Commissioners.
Practice of Charity Commissioners.	In the absence of any such clause as that last mentioned, the practice of the Charity Commissioners is to refuse to entertain an application for a new scheme in the case of a charity established by statute. A scheme for the regulation of such a charity cannot, therefore, be obtained, except by means of a private Act of Parliament. Cases of this kind most frequently occur in respect of charitable trusts created by Inclosure Acts.
Proposed alteration of law.	The inconvenience arising from this state of the law has occasioned efforts on the part of the Charity Commissioners to obtain powers of establishing schemes for the regulation of charities governed by private Acts of Parliament. Clauses for this purpose have been inserted in the various bills which have been introduced relating to charitable trusts. The clause to this effect, contained in the Charitable Trusts Bill, 1881, will be found <i>ante</i> , pp. 452, 453. The object which has been sought to be secured by such clauses is to give to the regulations made by Parliament, by means of a private Act, an authority as high as, but no higher than, that of the regulations made by the founder of the charity, so as to render it clear that they may from time to time be modified in accordance with the doctrine of <i>cy-près</i> .
Charity established by charter. Corporations as trustees.	The commissioners lay down no general rule of practice to refuse to entertain applications in the case of charities regulated by charter. Corporations are, as has been seen (<i>ante</i> , p. 67), frequently trustees of charities. This has been regarded with disfavour. It has been found that the impersonal veil of incorporation conceals the decisions and acts of the individual members, weakening the sense of responsibility and producing laxity of administration. Besides that, it is certain that, in point of law, the liability of the individual corporators for acts done by the corporate body is less and more difficult to bring home than where the acts are those of individual trustees. The current of practice, both on the part of the legislature and of the Court, has accordingly been to substitute, as far as possible, individual trustees for corporations. An instance of this is found in the Municipal

Corporations Act, 1835 (see *ante*, pp. 196 *et seq.*), whereby municipal corporations throughout the kingdom were removed from the trusteeship of borough charities, and were replaced by bodies of trustees. So, the Court of Chancery resorted to the contrivance of appointing boards of managers for the purpose of controlling the acts of corporate trustees. Under the End. Schools Acts (End. Schools Act, 1869, s. 10, *post*), the Charity Commissioners have power to dissolve a corporation incorporated solely for the purpose of an educational endowment; and this power it has been the practice to exercise.

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(a).

There were formerly, no doubt, advantages attendant on the incorporation of charity trustees, and if a clause were introduced into the charter or Act providing that the liability of trustees and managers should remain the same as if they had not been incorporated, the drawbacks above referred to were in some measure removed. This was the method adopted by the Charit. Trustees Incorporation Act, 1872. In the present state of the law, however, the benefits of incorporation, without its disadvantages, are practically secured by vesting the charity property in the official trustees. See further *n. (a)* to sect. 1 of the Charit. Trustees Incorporation Act, 1872, *post*, p. 662.

The charitable corporations which have been found most urgently to require reform are those in which the recipients themselves form the corporation, as where the master and poor of a hospital are incorporated (see *ante*, pp. 69, 177). Here the corporation is at once the governing body and the recipient. In numerous cases great abuses have been found to exist in these charities in regard to the sale and leasing of lands, and particularly from the frequency of the custom to grant leases on the wasteful system of fines. See *ante*, p. 262.

Beneficiary corporations.

Instances of this class of charity have come before the Court in the cases of *Att.-Gen. v. Ewelme Hospital*, 17 Beav. 366; *Att.-Gen. v. St. Cross Hospital*, 18 Beav. 475; *Att.-Gen. v. St. John's Hospital, Bath*, L. R. 1 Ch. 92.

In framing schemes with regard to these corporations, the Court adopted the plan of transferring the entire administration of the charity from the corporation to trustees or governors appointed by the scheme. The scheme commonly provided that the trustees or their clerk should have the custody of the common seal, and that the corporation should execute all instruments which the trustees should require, and should not act, except subject to the direction of the trustees, in the management of the property generally.

Transfer of administration to body of trustees.

The practice thus adopted by the Court is almost invariably followed by the Charity Commissioners in dealing with beneficiary corporations. An example of the clauses used for the purpose of effecting this result will be found in Scheme No. III., in App. II. to this Book, *post*.

It may be worth while to mention that the practice of the Court in the application of the doctrine of *cy-près* is not to be gathered exclusively from the reported decisions to which alone the profession at large have access. Numerous schemes have from time to time been established by the Court in cases which have not found their way into the reports, many of them being uncontested. A large proportion of these unreported cases are recorded in the office of the Charity Commissioners, and equally with the reported cases furnish precedents for their action in applying the *cy-près* doctrine; thus

Application of cy-près doctrine.

Sect. 2
(a)–(l).

Hearing
counsel.

enabling them in some cases to act with a freer hand than would otherwise be possible.

In the course of an unreported judgment in *Benthall v. Earl of Kilmorey* (25th October, 1884; reported on a previous hearing, 25 Ch. D. 39), upon a petition of appeal against a scheme settled by the Charity Commissioners, Chitty, J., said, "I take it it is in the discretion of the Charity Commissioners to lay down a rule that they will not hear counsel in these matters, seeing that it is necessary to keep down as far as they can the expenses which are attendant necessarily on the framing of a scheme. Their rule appears to be that they will not hear counsel except in exceptional cases, and it is a discretion on their part which I think the Court ought not to interfere with." Lord Romilly, in *Re Hackney Charities*, 34 L. J. Ch., at p. 175, expressed an opinion that in difficult cases the commissioners ought to hear counsel.

(b) Sects. 4–7 of this Act, *post*.

(c) Sects. 8 and 9 of this Act, *post*.

(d) *Ante*, p. 507. As to applications in the case of charities of which the gross annual income is not less than 50*l.*, see sect. 4 of this Act, *post*.

(e) With regard to the jurisdiction at chambers, see sect. 28 of the Charit. Trusts Act, 1853, *ante*, and notes thereto; and see also *ante*, pp. 337 *et seq.*

(f) With regard to the jurisdiction of the County Courts, see Charit. Trusts Act, 1853, s. 32, *ante*, and notes thereto; and see also *ante*, pp. 343, 344.

(g) The words in italics were repealed by the Stat. Law Rev. Act, 1875, district Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

(h) See note (a), *supra*.

Removal of
schoolmaster,
&c.

(i) Under the Charit. Trusts Act, 1853, s. 22, the Board may empower charity trustees to remove a schoolmaster or schoolmistress. See also sect. 14 of this Act, *post*.

As to the recovery of possession of school buildings and property held over by schoolmasters and others, see sect. 13 of this Act, *post*.

As to the notice to be given prior to removal, see sect. 6 of the Act, and as to appeal, sect. 8, *post*.

Vesting
orders.

(j) With regard to the vesting of charity lands in and divesting them from the official trustee of charity lands, see Charit. Trusts Act, 1853, ss. 48–50, *ante*, and note (a) to sect. 48.

With regard to the transfer of stock and payment of money to the official trustees of charitable funds, see Charit. Trusts Act, 1853, s. 51, and Charit. Trusts Act, 1855, s. 12, *ante*.

Copyholds
not vested in
official
trustee.

Orders for vesting charity land in the official trustee of charity lands expressly exclude copyholds. Under sect. 48 of the Charit. Trusts Act, 1853, copyholds cannot be so vested without the consent of the lord of the manor. In the comparatively rare cases in which charities possess copyhold land, it is found more convenient to allow it to remain vested in the charity trustees.

(k) Charit. Trusts Amend. Act, 1855, s. 12, *ante*.

(l) See note (a), *supra*.

Board to
notify to trus-
tees of charity

3. The said Board, previously to making any order

under the jurisdiction vested in them by this Act, shall notify to the trustees or administrators (if any) of the charity to be affected thereby their intention of exercising such jurisdiction, by notice in writing, to be delivered to them, or sent to them by the post at their last known place of abode in Great Britain or Ireland (*a*).

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their intention of exercising powers.

(*a*) The notice need not be sent to trustees who have been privy to the application: Charit. Trusts Act, 1869, s. 4, *post*.

4. The said Board shall not make any order, under the jurisdiction vested in them by this Act, with respect to any charity of which the gross annual income, exclusively of the yearly value of any buildings or land used wholly for the purposes thereof, and not yielding any pecuniary income, shall amount to fifty pounds or upwards, except upon the application of the trustees or persons acting in the administration of the charity, or a majority of them (*a*), to be made to the said Board in writing under their hands if they shall be unincorporated, or under their common seal if they shall be incorporated, and the Board shall not make any order removing any trustee on the ground only of his religious belief (*b*).

Powers not to be exercisable over charities of which the gross annual income exceeds 50*l*. except on application of trustees.

Trustees not to be removed for religious belief.

(*a*) The application may be made in writing signed by any person authorized in that behalf by a resolution passed by a majority of the trustees: Charit. Trusts Act, 1869, s. 5, *post*.

(*b*) Cf. sect. 46 of the Charit. Trusts Act, 1853, *ante*.

5. The said Board also shall not exercise the jurisdiction hereby vested in them in any case which, by reason of its contentious character, or of any special questions of law or of fact which it may involve, or for other reasons, they may consider more fit to be adjudicated on by any of the judicial Courts (*a*).

The Board shall not exercise jurisdiction in contentious cases.

(*a*) This section does not deprive the Charity Commissioners of jurisdiction over contentious cases. It merely enables them to decline to exercise that jurisdiction where they consider that the case might be better dealt with by a court of law: *Re Burnham National Schools*, I. R. 17 Eq. 241. The opinion to the contrary, expressed by Lord Romilly in *Re Hackney Charities*, 34 L. J. Ch. 169, was not followed.

Construction.

Sect. 6.

Notices to be given of certain orders, and objections or suggestions to be received.

6. No order appointing or removing a trustee (*a*), or establishing a scheme for the administration of any charity (*b*), shall be made by the said Board before the expiration of one calendar month after public notice of the proposal to make such order shall have been given, as they may consider most expedient and effectual for ensuring the publicity thereof, in each parish or district in which the charity, if of a local character, shall be applicable, or among all persons interested therein (*c*); and no order removing a trustee or schoolmaster or mistress or other officer of a charity (*d*) who shall have any known place of residence in Great Britain or Ireland, and who shall not be consenting to be discharged, shall be made before the expiration of one calendar month after notice of the proposal to make such order shall have also been delivered to him or her, or sent by the post or otherwise to such his or her place of residence, and until after sufficient hearing of the matter before the said Board, or some member thereof, or one of their inspectors (*e*); and every notice hereby required shall contain (so far as conveniently may be) sufficient particulars of the objects of the proposed order, and shall prescribe a reasonable time within which any objections thereto or suggestions thereon may be made or transmitted to the Board; and the said Board shall receive and consider all such objections and suggestions, and may withhold, suspend, or modify (*f*) their proposed order, as they shall thereupon, or in the result of further inquiry, or otherwise, think expedient.

(*a*) See note (*a*) to sect. 2 of this Act, *ante*.

(*b*) *Ibid*.

Mode of publication.

(*c*) The mode of publication is left to the discretion of the commissioners. It is usually effected by affixing the notice to or near a principal outer door of the parish church, or of a church, chapel, town hall, or schoolroom in the locality, and also by advertisements in one or more local newspapers, with or without the addition of *The Times* or other London papers.

(*d*) See note (*i*) to sect. 2 of this Act, *ante*.

(*e*) Now "assistant commissioners:" Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

(*f*) Public notice of the modified order need not be given in the manner provided by this section unless the Board think further notice desirable: Charit. Trusts Act, 1869, s. 7, *post*.

7. A copy of every such order when made shall, in the case of any local charity, be deposited for the space of one calendar month in some convenient place within the parish or one of the parishes or in the district in which the charity shall be applicable, and shall be open to public inspection there at all reasonable hours during the same period; and a copy also of every such order relating to any charity, whether local or general, shall be kept open to public inspection at all reasonable hours, at the office of the Commissioners, during a like period of one calendar month; and in each case effectual publicity shall be given to the making of the order by such means as the Board shall consider most expedient for that purpose.

Sect. 7.Publication
of orders, &c.

8. The Attorney-General, or any person authorized by him or by the said Board, in the case of any charity, whatever may be the yearly income of its endowments, and any trustee or person acting in the administration of or interested in any charity of which the gross yearly income to be calculated in manner aforesaid shall exceed fifty pounds, or any two inhabitants of any parish or district in which the same shall be specially applicable (a), may, within three calendar months next after the definitive publication (b) of any order of the said Board appointing or removing a trustee or trustees, or for or relating to the assurance, transfer, payment, or vesting of any real or personal estate, or establishing a scheme for the administration of the charity, present a petition to the High Court of Chancery (c) in a summary way, appealing against such order, and praying such relief as the case may require; and any schoolmaster or schoolmistress or other officer removed by the order of the Board (d), without the concurrence of the trustees or persons acting in the administration of the charity, or a majority of them, and without the approval of a special visitor, if any, of the charity, may, within two calendar months (next after his or her removal), appeal in like

Power to
appeal against
orders of
Board.

Sect. 8. manner against the order of removal; and the Court, upon or before the hearing of any such petition of appeal as aforesaid or at any stage of the proceedings, may require, if it shall think fit, from the said Board, their reasons for making the order appealed against, or for any part of such order, and may remit the same to the Board for reconsideration, with or without any declaration in relation thereto, or may make any substitutive or other order in relation to the matter of the appeal, as it shall think just; and the Court may make any order respecting the costs, charges, or expenses incident to the appeal, and may also, before hearing or proceeding with the same, require from any appellant, other than the Attorney-General, proper security for such costs, charges, and expenses as may be eventually payable by him; but no such petition of appeal shall be presented by any person, other than the Attorney-General, before the expiration of twenty-one days after written notice, under the hand of such appellant, of his or her intention to present such petition, shall have been delivered to the said Board at their office (e).

Who may
appeal.

(a) It was held in *Re Hackney Charities*, 4 De G. J. & S. 588, that this section gave a right of appeal in every case, whatever the amount of the income of the charity, to the Attorney-General or to any person authorized to appeal by him or by the Charity Commissioners; but that it gave a right of appeal to the trustees or persons interested in the charity, or to two inhabitants of the parish or district, only when the income of the charity exceeded 50l.

The fact that the order embraced more than one charity, and that the aggregate income exceeded 50l., was held not to give a right of appeal to the inhabitants: *Re Hackney Charities*, *supra*.

Under sect. 10 of the Charit. Trusts Act, 1869, *post*, an appeal can only be presented, whatever the income of the charity, by the Attorney-General or a person authorized by him or the Board.

Time for
appealing.

The time for appealing runs from the time fixed for the final publication of the order of the Charity Commissioners: *Re Hackney Charities*, 10 Jur. N. S. 941.

Discretion,
when inter-
fered with.
Definitive
publication.

The discretion of the commissioners is not interfered with on appeal unless a strong case of mistake or miscarriage is made out: *ante*, p. 101.

(b) "Definitive publication" means the final publication when the time for the receipt of suggestions and objections has expired: *Re Hackney Charities*, 12 W. R. at p. 1131.

(c) Now the Chancery Division, to which this jurisdiction is assigned: Jud. Act, 1873, s. 34, sub-s. (3).

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(c), (d), (e).

(d) See note (i) to sect. 2 of this Act, *ante*.

(e) The like notice must also be given to the Attorney-General: Charit. Trusts Act, 1869, s. 11, *post*.

9. The Attorney-General, if he shall think fit, or any person authorized by him or by the said Board, may appear as the respondent upon any such appeal, and the Court may make any order respecting the costs, charges, and expenses of the Attorney-General or other defendant.

Who may be the respondent on appeals, &c.

10. The jurisdiction vested by this Act in the said Board shall be exerciseable with reference to charities vested in any corporation sole or aggregate, who, either solely or jointly with any other person or persons, shall also be the recipients of the benefit thereof (a).

Powers to apply to charities vested in corporations interested therein.

(a) See further, with regard to beneficiary corporations, note (a) to sect. 2 of this Act, *ante*.

11. The jurisdiction vested by the Charitable Trusts Act, 1853, in the *District Courts of Bankruptcy* and (a) County Courts (b), over charities not possessing a larger gross yearly income than thirty pounds, shall be exerciseable by the said Courts respectively for the like purposes and under the like provisions over charities of which the gross yearly income for the time being, to be calculated in manner aforesaid, shall not exceed fifty pounds, in the same manner as if the last-mentioned limit to the jurisdiction of the said Courts had been fixed by the said former Act.

Jurisdiction of the District Courts of Bankruptcy and County Courts enlarged.

(a) The words in italics were repealed by the Stat. Law Rev. Act, 1875, district Courts of Bankruptcy having been abolished by the Bankruptcy Act, 1869.

(b) See sect. 32 of the Charit. Trusts Act, 1853, *ante*.

12. Any Court or judge, or the said Board (b), having jurisdiction to authorize the Official Trustees of Charitable Funds to call for a transfer (c) of and to transfer (d) any

Official Trustees of Charitable Funds may be empowered

Sect. 12. annuities, stock, or securities, may empower them also to receive and recover, in trust for the charity to which the same shall belong, all dividends, interest, and income accrued from any such annuities, stock, or securities respectively, and which shall for the time being be in arrear.

to receive
arrears of
dividends (a).

(a) As to the official trustees of charitable funds, see note (a) to sect. 51 of the Charit. Trusts Act, 1853, *ante*.

(b) See sect. 2 of this Act, *ante*.

(c) Charit. Trusts Amend. Act, 1855, s. 12, *ante*.

(d) Charit. Trusts Act, 1853, s. 51, *ante*.

Power for
justices to
give possession of school
buildings and
property
held over by
officers or
recipients of
charities.

13. Where any schoolmaster or mistress or other officer, or any recipient of the benefit of a charity, being in possession by virtue of his or her office, or as such recipient, of any house, buildings, land, or property of the charity, shall have been removed from or shall cease to hold such his or her office, or his or her place as such recipient, but he or she, or any person claiming under him or her, shall refuse or neglect to relinquish the possession of such house, buildings, land, or property within one calendar month next thereafter, to his or her successor, or to the trustees or persons acting in the administration of the charity, or as they shall direct, it shall be lawful for any two or more justices of the peace acting for the district, division, or place in which such house, buildings, land, or property shall be situate, in petty sessions assembled, and they are hereby required, on the complaint of the said trustees or administrators, and on the production of an order of the said Board certifying such schoolmaster or mistress or other officer or recipient to have been duly removed from or to have ceased to hold his or her office or place, (which order under the seal of the said Commissioners shall be conclusive evidence of the facts thereby certified, and of the jurisdiction of the said Commissioners to make such order for all the purposes of this enactment, and shall afford a complete indemnity to all persons acting thereunder,) to issue a warrant under the hands and seals of

such justices to any constables or peace officers of the same district, division, or place, commanding them, within a period to be thereby appointed, not being less than ten or more than twenty-one clear days thereafter, to enter into the premises, and deliver possession thereof to the said trustees or administrators, or their nominee or agent, and to remove therefrom such former schoolmaster or mistress, or other officer or recipient, and all persons claiming in his or her right, as fully and effectually, and subject to the same provisions, as nearly as the case will permit, as justices of the peace are empowered to give possession of any properties to the landlord or his agent upon the determination of the tenancy thereof, under an Act passed in the first and second years of the reign of her Majesty, chapter seventy-four, for facilitating the recovery of possession of tenements after the determination of the tenancy (a). Sect. 13.

1 & 2 Vict.
c. 74.

(a) See sect. 22 of the Charit. Trusts Act, 1853, *ante*, and sect. 2 of the present Act, and note (i) thereto, *ante*.

Sect. 18 of 4 & 5 Vict. c. 38, also contains provisions enabling justices of the peace or sheriffs to give possession of schoolrooms, schoolhouses, or otherwise (except in the case of a grammar school), where a schoolmaster or schoolmistress, after having been dismissed, refuses to quit or deliver up possession.

14. Every schoolmaster and mistress appointed after the date of this Act shall be removable from his or her office, after reasonable notice by the trustees or persons acting in the administration of the charity, as they shall think expedient in the interests thereof, so nevertheless that the removal by virtue only of this provision of a master or mistress who would be otherwise irremovable from his or her office, shall be determined on by all or a majority of such trustees or administrators assembled at a meeting convened by due notice, delivered or sent by the post to all such trustees or administrators who shall have any known place of residence in Great Britain or Ireland, by the space of not less than twenty-eight days previously, for the special purpose of considering and Removal of
masters and
mistresses of
schools.

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determining on the question of such removal, and of which intended meeting a notice shall also be delivered or sent in like manner to the master or mistress by the same previous space, and so also that the resolution of the meeting for the removal of any such last-mentioned master or mistress shall be forthwith certified under the hands of the trustees or persons acting as aforesaid who shall have concurred therein, or under the hand of the chairman of the meeting, and shall within seven days next thereafter be transmitted to the said Board for their approval, and the same shall not take effect unless or until the same shall have been approved by the said Board, who may also, if they so think fit, fix the time or any reasonable conditions at or under which the same shall come into operation; if also there shall be any special visitor of the charity who shall be resident in Great Britain or Ireland, and free from incapacity, no removal of any such last-mentioned master or mistress shall be made under the authority only of the preceding provision without the written consent of such visitor: Provided always, that this section shall not apply to any endowed grammar school.

Extension of
power of
Board under
16 & 17 Vict.
c. 137, s. 21.

15. The power vested in the said Board by the twenty-first section of "The Charitable Trusts Act, 1853" (*a*), of authorizing the application of monies belonging to any charity, or to be raised on the security of the properties thereof, to the improvement of such properties, shall extend to authorize the application of any like monies to any other purpose or object which the Board shall consider to be beneficial to the charity or the estate or objects thereof, and which shall not be inconsistent with the trusts or intentions of the foundation.

Purchase of
land.

(*a*) *Ante*, p. 484.

This section is wide enough to authorize the application of the funds of a charity in the purchase of land. See note (*a*) to sect. 27 of the Charit. Trusts Act, 1853, *ante*, p. 494.

Most of the financial orders of the Board are made under this section,

which gives full power to authorize dealings with capital which cannot be safely effected by trustees on their own responsibility.

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(a).

16. *A majority of two-thirds of the trustees of any charity assembled at a meeting of their body duly constituted, and having power to determine on any sale, exchange, partition, mortgage, lease, or other disposition of any property of the charity, shall also have a legal power, on behalf of themselves and their co-trustees, and also of the official trustee of charity lands, where his concurrence would be otherwise required, to do, enter into, and execute all such acts, deeds, contracts, and assurances as shall be requisite for carrying any such sale, exchange, partition, mortgage, lease, or disposition into legal effect, and all such acts, deeds, contracts, or assurances shall have the same legal effect as if the same were respectively done, entered into, or executed by all the acting trustees for the time being, and by the said official trustee (a).*

A majority of trustees to have legal power of dealing with the charity estates.

(a) Repealed by sect. 17 of the Charit. Trusts Act, 1869, sect. 12 of that Act being substituted.

17. No Official Trustee of Charitable Funds (a), appointed under or in pursuance of the first or secondly recited Act (b), shall be chargeable with or accountable for any loss or misapplication of the said charitable funds, or the dividends, interest, or income thereof, unless the same shall have been occasioned by or through his own wilful neglect or default.

No official trustee to be accountable for loss unless occasioned by his own neglect.

(a) See Charit. Trusts Act, 1853, s. 51, *ante*.

(b) The words in italics are repealed by sect. 6 of the Charit. Trusts Act, 1887, *post*.

18. The Official Trustees of Charitable Funds (a) shall lay before Parliament annually, on or before the fourteenth day of February, or as soon as practicable after Parliament shall be sitting, an account of the total amount of the capital stock, shares, and securities transferred to them in the year ending the thirty-first day of December preceding, and of the total amount of monies, other than dividends or interest, paid to them or to their account during the same period, and of the investment

Accounts of official trustees to be laid before Parliament.

Sect. 18. thereof, and of the capital stock, shares, and securities sold or re-transferred by them during the same period, and of the aggregate amount of the capital stock, shares, funds, and securities, and the balance of cash, held by them on such preceding thirty-first day of December.

(a) See Charit. Trusts Act, 1853, s. 51, *ante*.

Transmission of documents belonging to charities for examination; and retention thereof in the repository provided under 16 & 17 Vict. c. 137, s. 63 (*semb.* s. 53) (a).

19. The Board (b) may require any person having the custody or control of any deed or document in which any charity or charities shall be solely interested to transmit the same to the office of the said Commissioners for examination; and where such deed or document shall not be held by any person entitled as a trustee or otherwise to the custody thereof, the Board may either retain the same, for the security thereof, in the repository provided by them under the sixty-third section (c) of "The Charitable Trusts Act, 1853," or, as they may think most advantageous to the charity, may thereupon, or at any time thereafter, return or issue the same to the trustees or persons acting in the administration of the charity, for the purposes thereof.

(a) See, also, sects. 9—14 of the Charit. Trusts Act, 1853, and sects. 6—9 of the Charit. Trusts Amend. Act, 1855, *ante*.

(b) The Charity Commissioners sitting as a Board: Charit. Trusts Act, 1853, s. 66, *ante*.

(c) This should be the 53rd section, *ante*.

Orders under this Act to be enforceable, &c. as orders under former Acts.

20. All orders made by the said Board under the provisions of this Act shall be enforceable by the same means, and shall be subject to the same provisions, as are applicable under the Charitable Trusts Act, 1853, and the Charitable Trusts Amendment Act, 1855, respectively, to any orders of the said Board made thereunder (a).

(a) See sect. 14 of the Charit. Trusts Act, 1853, and sect. 9 of the Charit. Trusts Amend. Act, 1855, *ante*.

Board to make minutes.

21. The said Board shall from time to time make such minutes as shall be required relative to the institution and conduct of their proceedings under the jurisdiction created by this Act.

22. *There shall be paid to the secretary for the time being of the said Commissioners, in consideration of the increase and extent of his official duties, such a salary, not exceeding the annual sum of eight hundred pounds, in lieu of the salary payable to him under the firstly cited Act, as shall from time to time be allowed by the Commissioners of her Majesty's Treasury (a).*

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Salary of the secretary.

(a) Repealed by sect. 3 of the Endowed Schools Act, 1874, *post*, under which all salaries are fixed by the Treasury.

23. Every order made under this Act under which any stock, shares, securities, or monies shall be transferred or paid to or deposited with the trustees of any charity, or the Official Trustees of Charitable Funds, shall afford a complete indemnity to the Governor and Company of the Bank of England, and to all companies and persons by whom respectively any such transfer, payment, or deposit shall be permitted or made, for permitting or making the same, and the said Governor and Company and other companies and persons shall be required to give effect or to conform to such order, and it shall not be necessary for them to inquire concerning the propriety of the same order, or the jurisdiction under which the same shall purport to be made (a).

Orders under this Act shall afford indemnity to the Bank of England, &c.; who shall give effect to them, &c.

(a) See Charit. Trusts Amend. Act, 1855, s. 27, *ante*, as to orders made under that Act and the Charit. Trusts Act, 1853. By the Charit. Trusts Act, 1887, s. 4, sub-s. (4), *post*, the Treasury regulations and orders made thereunder are a similar indemnity.

24. *Every Commissioner, secretary, and inspector acting under or employed for the purposes of the said Acts shall be exempt from serving on juries while he shall be so acting or employed (a).*

Commissioners, &c., exempted from serving on juries.

(a) Repealed by the Stat. Law Rev. Act, 1875, the Juries Act, 1870 (33 & 34 Vict. c. 77), having provided (s. 9), that no person, except those mentioned in the schedule to that Act (among whom the persons here mentioned are not included), should be exempt from serving on juries.

25. This Act may be cited for all purposes by the short title of "The Charitable Trusts Act, 1860."

Short title.

THE ROMAN CATHOLIC CHARITIES ACT.

23 & 24 VICT. c. 134.

An Act to amend the Law regarding Roman Catholic Charities. [28th August, 1860.]

WHEREAS it is expedient that the laws concerning charities relating to or connected with the Roman Catholic Religion in England or Wales should be amended in the particulars hereinafter provided for: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Charities for lawful purposes not to be invalidated by the addition of unlawful trust; but the property may be apportioned, and the whole applied to lawful purposes (a).

1. No existing or future gift or disposition of real or personal estate upon any lawful charitable trust for the exclusive benefit of persons professing the Roman Catholic religion shall be invalidated by reason only that the same estate has been or shall be also subjected to any trust or provision deemed to be superstitious (b), or otherwise prohibited by the laws (c) affecting persons professing the same religion, but in every such case it shall be lawful for the High Court of Chancery (d), or any judge thereof sitting at chambers, in exercise of the jurisdiction created by the Charitable Trusts Act, 1853 (e), upon the application of her Majesty's Attorney-General, or of any person authorized for this purpose by the certificate of the Board of Charity Commissioners for England and Wales, or for the said Board upon the application of the person or persons acting in the

Sect. 1.

administration of such real or personal estate, or of a majority of such persons, to apportion the same estate, or the annual income or benefit thereof, so that a proportion thereof, to be fixed by such Court or judge, or by the said Board, as the case may require, may be exclusively subject to the lawful charitable trusts declared by the donor or settlor, and that the residue thereof may become subject to such lawful charitable trusts for the benefit of persons professing the Roman Catholic religion, to take effect in lieu of such superstitious or prohibited trusts as the said Court or judge, or the said Board, may consider under the circumstances to be most just; and also that it shall be lawful for the Court or judge, or Board, making any such apportionment by the same or any other order or orders to establish any scheme for giving effect thereto, and to appoint trustees for the administration of the several portions of such real and personal estate, according to the trusts established of the same proportions respectively, and to vest the estate to be so apportioned in the trustees so to be appointed.

(a) Roman Catholic charities were temporarily exempted from the operation of the Charit. Trusts Acts: see note (c) to sect. 62 of the Charit. Trusts Act, 1853, *ante*, p. 524. The exemption ceased on the 1st of September, 1859, and from that date Roman Catholic charities have been subject to those Acts.

Subject to Charit. Trusts Acts.

(b) As to superstitious uses, and the statutes removing the disabilities of Roman Catholics, see *ante*, Chap. II.

Superstitious uses.

This section, of course, does not apply where the fund is wholly dedicated to superstitious uses: *Re Blundell's Trusts*, 30 Beav. 360.

(c) See 10 Geo. IV. c. 7, *ante*, p. 20, n. (c), and *Sims v. Quinlan* and other cases cited *ante*, p. 24, n. (z).

(d) Now the Chancery Division of the High Court of Justice: Jud. Act, 1873, s. 34, sub-s. (3).

(e) See sect. 28, *ante*, p. 494.

2. No proceedings at law or in equity shall be brought or instituted on account or in respect of any dealings, transactions, matters, or things with or concerning any real or personal estate subject to any use, trust, gift, foundation, or disposition for any charity (a) relating to

No proceedings to be instituted as to dealings with Roman Catholic charities prior to 2 & 3 Will. IV. c. 115.

Sect. 2.

or connected with the Roman Catholic religion which took place prior to the passing of the Act of the second and third years of the reign of King William the Fourth, chapter one hundred and fifteen (*b*): Provided that nothing herein contained shall extend to sanction or exempt from such proceedings as aforesaid the fraudulent misapplication or conversion of any such real or personal estate to any private use or purpose not being charitable.

(a) "Charity" in this Act has the same meaning as in the Charit. Trusts Act, 1853: sect. 8 of this Act, *post*.

(b) The Roman Catholic Charities Act, 1832. By that Act Roman Catholics were placed on the same footing as Protestant dissenters "in respect to their schools, places for religious worship, education, and charitable purposes in Great Britain:" see *ante*, p. 20.

Deeds for Roman Catholic charities made subsequently to 9 Geo. II. c. 36, not to be void if enrolled within twelve months after passing of this Act.

3. No deed or other assurance for any charity relating to or connected with the Roman Catholic religion made subsequently to the passing of the Act passed in the ninth year of the reign of King George the Second, intituled *An Act to restrain the Disposition of Lands whereby the same become inalienable* (*a*), and before the passing of this Act, shall be void or voidable by reason of the same not having been made, perfected, or enrolled in the manner directed by the first-named Act, or otherwise, under the provisions of the said Act, if such deed or assurance has been or shall be, within twelve months after the passing of this Act, enrolled in the High Court of Chancery: Provided that every deed or assurance for any such charity as aforesaid coming within the provisions of the Act passed in the ninth year of the reign of King George the Fourth, intituled *An Act for remedying a defect in the Titles of Lands purchased for Charitable Purposes* (*b*), shall have the benefit thereof notwithstanding anything herein contained.

9 Geo. IV. c. 85.

(a) 9 Geo. II. c. 36, repealed by sect. 13, and re-enacted by Part II. of the Mortm. and Charit. Uses Act, 1888, *ante*.

(b) 9 Geo. IV. c. 85, repealed by sect. 13 of the Mortm. and Charit. Uses Act, 1888, *ante*.

Expense of enrolment,

4. *The expense of the enrolment of any deed under the*

third section of this Act shall be defrayed out of the property subject to the charity to which the same may relate (a). **Sect. 4.**

how to be defrayed.

(a) Repealed by the Stat. Law Rev. Act, 1875.

5. Where any real or personal estate, subject to any use, trust, gift, foundation, or disposition for any charity relating to or connected with the Roman Catholic religion, shall have been applied upon any charitable trusts relating to or connected with the same religion during any continuous period of twenty years, but the original trusts of such property shall not be ascertained by means of any written document, the consistent usage of the last preceding twenty years, or of the last period of twenty years during which any consistent usage in the application of such property shall have prevailed, shall be deemed to afford conclusive evidence of the trusts on which the same property shall have been settled (a).

The trusts of charities, in the absence of written documents, may be ascertained from the usage.

(a) See *ante*, p. 121.

6. Nothing in this Act contained shall extend to give effect to any use, trust, gift, foundation, or disposition heretofore made which has been already avoided in any proceeding at law or in equity, or to prejudice any suit at law or in equity commenced before the passing of this Act, or to affect any property held or enjoyed beneficially by any person or persons at the time of the passing of this Act adversely (a) to any such use, trust, gift, foundation, or disposition.

Act not to prejudice past or pending proceedings or present adverse possession.

(a) See note (g) to sect. 17 of the Charit. Trusts Act, 1853, *ante*, p. 482.

7. Nothing in this Act contained shall be taken to repeal or in any way alter any provisions of an Act passed in the tenth year of his late Majesty King George the Fourth, intituled *An Act for the Relief of his Majesty's Roman Catholic Subjects*, respecting the suppression or prohibition of the religious orders or

Act not to affect the provisions of 10 Geo. IV. c. 7, as to the suppression of religious orders of the Church of Rome.

Sect. 7. societies of the Church of Rome bound by monastic or religious vows (a).

(a) For the provisions of this Act, see *ante*, p. 20, n. (c); and see *Sims v. Quinlan*, 17 Ir. Ch. R. 43, and other cases cited *ante*, p. 24, n. (z).

Interpreta-
tion of
"charity."

8. In the construction of this Act, except where the context or other provisions of this Act shall require a different construction, the expression "charity" herein contained shall be construed to mean and include the same matters and things as the like expression means and includes in the "Charitable Trusts Act, 1853" (a).

(a) Sect. 66, *ante*.

Short title.

9. This Act may for all purposes be cited as "The Roman Catholic Charities Act."

Extent of
Act.

10. This Act shall be confined in its operation to England and Wales.

THE CHARITABLE TRUSTS ACT, 1862.

25 & 26 VICT. c. 112.

An Act for establishing the Jurisdiction of the Charity Commissioners in certain Cases (a). [7th August, 1862.]

WHEREAS by the Acts relating to the Charity Commissioners for England and Wales authority has been given to the Commissioners to make orders for various purposes in charity cases upon summary application, and particularly in relation to the appointment and removal of trustees, and the sale, exchange, leasing, and improvement of the property of charities: and whereas in various private Acts of Parliament and decrees and orders of the High Court of Chancery relating to charities such powers and authorities are often given or reserved, with directions that the same shall be exercised by the said Court, or with its sanction or approbation, and doubts are entertained whether in such cases the authority given to the Charity Commissioners can be validly exercised: Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal; and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. No provision contained in any such Act of Parliament or decree or order as aforesaid for the appointment or removal of trustees of any charity, or for or relating to the sale, exchange, leasing, disposal, or improvement of any property, by or under the order or with the approval of the Court of Chancery, shall (in the absence

No provision in any Act of Parliament or order of the Court of Chancery relating to any charity to exclude any jurisdiction which

Sect. 1. of any express direction to the contrary, to be contained in any future Act of Parliament, order, or decree,) exclude or impair any jurisdiction or authority which might otherwise be properly exercised for the like purposes by the Charity Commissioners for England and Wales (*b*).

might otherwise be exercised by the Charity Commissioners.

(*a*) This Act may be cited as the Charit. Trusts Act, 1862: Charit. Trusts Act, 1869, sect. 3, *post*.

(*b*) See Charit. Trusts Act, 1853, ss. 21, 24, *ante*, and Charit. Trusts Act, 1860, s. 2, *ante*.

This section applies also to decrees and orders of the High Court of Justice relating to charities: Jud. Act, 1873, s. 16.

THE CHARITABLE TRUSTS ACT, 1869.

32 & 33 VICT. c. 110.

An Act for amending the Charitable Trusts Acts.

[11th August, 1869.]

WHEREAS doubts have arisen respecting the construction of some provisions of the Charitable Trusts Acts, and it is expedient to remove such doubts and otherwise to amend those Acts :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This Act may be cited as "The Charitable Trusts Short title.
Act, 1869."

2. This Act shall not extend to Scotland or Ireland. Extent of Act.

3. This Act, so far as is consistent with the tenor thereof, shall be construed as one with the Charitable Trusts Act, 1853, the Charitable Trusts Amendment Act, 1855, and the Charitable Trusts Act, 1860, and the Act of the session of the twenty-fifth and twenty-sixth years of the reign of her present Majesty, chapter one hundred and twelve, "for establishing the jurisdiction of the Charity Commissioners in certain cases" (which may be cited as the Charitable Trusts Act, 1862), and those Acts, together with this Act, may be cited as the Charitable Trusts Acts, 1853 to 1869 (*a*). Act to be construed with
16 & 17 Vict.
c. 137.
18 & 19 Vict.
c. 124.
23 & 24 Vict.
c. 136.
25 & 26 Vict.
c. 112.

(*a*) The Charit. Trusts Act, 1887, is construed as one with the Charit. Trusts Acts, 1853 to 1869, and all of them may be cited together as the Charit. Trusts Acts, 1853 to 1887 : Charit. Trusts Act, 1887, s. 1, *post*.

Sect. 4.

Amendment
of sect. 3 of
23 & 24 Vict.
c. 136.

4. A notice under section three of the Charitable Trusts Act, 1860 (*a*), need not be sent by the Board of Charity Commissioners for England and Wales to any trustee or administrator of a charity who has been party or privy to the application to the Board upon which they exercise their jurisdiction.

(*a*) *Ante*, p. 564.

Mode of
application
to Board.

5. An application to the Board of Charity Commissioners for England and Wales, for the purposes of the Charitable Trusts Acts, 1853 to 1869, when made by the trustees or persons acting in the administration of the charity (*a*), may be made in writing signed by any person authorized in that behalf by a resolution passed by a majority of those trustees or persons who are present at a meeting of their body duly constituted and vote on the question.

(*a*) Charit. Trusts Act, 1853, ss. 16, 21, 23, 24, 25, 54; Charit. Trusts Amend. Act, 1855, ss. 22, 33; Charit. Trusts Act, 1860, ss. 2, 4.

Powers of
Board on
application.

6. The Board shall be deemed to have and to have always had power in any order made upon an application to them, for the exercise of their jurisdiction under the Charitable Trusts Acts, 1853 to 1869, to insert in the order any incidental provisions which they think expedient for carrying into effect the substantial objects of the application, and which they would have had power to insert if such provisions had been included in the application.

Notice of
order.
23 & 24 Vict.
c. 136, s. 6.

7. Nothing in the Charitable Trusts Acts, 1853 to 1869, shall be deemed to require or to have required the Board, upon modifying a proposed order in manner provided by section six of the Charitable Trusts Act, 1860 (*a*), after the publication thereof, to give public notice of such modified order in the manner provided by that section with respect to the order originally proposed, unless they think further notice desirable.

(*a*) *Ante*, p. 566.

8. The Board shall be deemed to have and to have always had power with or without any application to discharge, within twelve months after an order is made by them, the whole or any part of any order appearing to have been made by them by mistake or on misrepresentation, or otherwise than in conformity with the Charitable Trusts Acts, 1853 to 1869.

Sect. 8.

Discharge
of order of
Board for
irregularity.

Every order made by the Board, in exercising their jurisdiction under the Charitable Trusts Acts, 1853 to 1869, shall, until discharged or varied by the Board or by the Court of Chancery on appeal under section eight of the Charitable Trusts Act, 1860 (a), have effect according to its tenor.

Every order of the Board shall, subject to all powers which the Court of Chancery has to discharge or vary it, under section eight of the Charitable Trusts Act, 1860 (a), and subject to the power of the Board to discharge it wholly or partially for the causes mentioned in this section, be deemed to have been duly and formally made, and no objection thereto on the ground only of irregularity or informality shall be entertained.

(a) *Ante*, p. 567.

9. The Board, if they think it desirable, where the gross annual income of a charity is in their opinion sufficient to bear the expense, may, upon the application of the trustees (b) or of any other person or persons entitled to apply to them in that behalf, employ or may authorize the trustees or persons acting in the administration of such charity to employ skilled and competent persons to prepare any scheme, order, statement, or other proceeding for the purposes of the Charitable Trusts Acts, 1853 to 1869, with respect to such charity, or to make or assist in any survey or local inquiry with reference thereto, and may order the costs incurred under this section or upon any inquiry by an inspector (c), or in consequence of the employment of any person to appear on behalf of the respondent upon any

Employment
of persons
to prepare
and defend
scheme (a).

Sect. 9. appeal against any scheme or order, to be provided in the same manner as if they were costs of a transaction mentioned in section thirty-six of the Charitable Trusts Act, 1855 (*d*).

(*a*) With regard to the power of the Board to establish schemes, see Charit. Trusts Act, 1860, s. 2, *ante*.

(*b*) As to the mode of application, see sect. 5 of this Act, *ante*.

(*c*) Now "assistant commissioner": Charit. Trusts Act, 1887, s. 2, sub-s. (3), *post*.

(*d*) *Ante*, p. 551.

Appeals
under
23 & 24 Vict.
c. 136.

10. A petition to the Court of Chancery under section eight (*a*) of the Charitable Trusts Act, 1860, may be presented in the case of all charities by the same persons only as in the case of a charity the gross annual income of which does not exceed fifty pounds.

(*a*) *Ante*, p. 567. The effect of this section is that no one except the Attorney-General, or a person authorized by him or by the Charity Commissioners, can in any case appeal against any of the orders mentioned in that section.

Service of
Attorney-
General
by appellant
under
sect. 8 of
23 & 24 Vict.
c. 136, s. 8.

11. A petition shall not be presented to the Court of Chancery by any person under section eight of the Charitable Trusts Act, 1860 (*a*), before the expiration of twenty-one days after written notice under the hand of the appellant of his intention to present such petition has been served on the Attorney-General by delivering the same to the solicitor who acts for him in *ex officio* proceedings relating to charities.

(*a*) *Ante*, p. 567.

Legal power
of majority
of trustees
to deal with
charity
estates (*a*).

12. Where the trustees or persons acting in the administration of any charity have power to determine on any sale (*b*), exchange (*c*), partition (*d*), mortgage (*e*), lease (*f*), or other disposition of any property of the charity, a majority of those trustees or persons who are present at a meeting of their body duly constituted and vote on the question shall have and be deemed to have always had full power to execute and do all such assur-

ances, acts, and things as may be requisite for carrying any such sale, exchange, partition, mortgage, lease, or disposition into effect, and all such assurances, acts, and things shall have the same effect as if they were respectively executed and done by all such trustees or persons for the time being and by the Official Trustee of Charity Lands (*g*). Sect. 12.

(a) This section is substituted for sect. 16 of the Charit. Trusts Act, 1860, which is repealed by sect. 17 of this Act.

(b) As to sales, see *ante*, pp. 250 *et seq.*, and sect. 24 of the Charit. Trusts Act, 1853, *ante*.

(c) As to exchanges, see *ante*, pp. 267—270, and note (a) to sect. 24 of the Charit. Trusts Act, 1853, *ante*.

(d) As to partitions, see *ante*, pp. 270, 271, and note (a) to sect. 23 of the Charit. Trusts Act, 1853, *ante*.

(e) As to mortgages, see *ante*, pp. 271, 272, and note (c) to sect. 21 of the Charit. Trusts Act, 1853, *ante*.

(f) As to leases, see *ante*, pp. 257 *et seq.*, and sect. 21 of the Charit. Trusts Act, 1853, *ante*, and note (a) thereto.

(g) See note (a) to sect. 24 of the Charit. Trusts Act, 1853, *ante*, p. 491.

13. The majority of the trustees of any charity, if authorized by the Board (*a*), may institute and maintain any action, suit, petition, or other proceeding in the same manner in all respects as if they were the sole trustees of the charity. Legal proceedings by trustees of charities for protection of charity property, &c.

Where the trustees, or the majority of the trustees, of any charity, institute and maintain any action, suit, petition, or other proceeding under the authority of the Board, such action, suit, petition, or other proceeding shall not abate or become discontinued or of no effect by reason of the death or removal from office of any of the trustees, or of the addition of any new trustee, but shall continue and have effect for and against the trustees for the time being of the charity, in the same manner as if they were actually named therein (*b*).

(a) The Charity Commissioners sitting as a Board: Charit. Trusts Act, 1853, s. 66, *ante*.

As to when the sanction of the Board is required to legal proceedings, see Charit. Trusts Act, 1853, s. 17, *ante*.

(b) See R. S. C. 1883, Ord. XVII. r. 1, by which it is provided that "A Abatement. cause or matter shall not become abated by reason of the marriage, death, or

Sect. 13
(b).

bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*. . . .”

Application
by exempted
charities to
have benefit
of Act.
See 16 & 17
Vict. c. 137,
s. 3 (a).

14. Either the trustees or the persons acting in the administration of any charity exempted from the operation of the Charitable Trusts Acts, 1853 to 1869, may apply to the Board (b) to have the said Acts or any provisions thereof specified in the application extended to such charity: Such application shall be made by such of the said trustees or persons as having regard to the value of the charity might under the provisions of the said Acts, if the charity were not exempted therefrom, make an application for a scheme to any judge or court or to the Board, and shall be made in the same manner and according to the same regulations as such application (c).

On any such application the Board may make an order directing that the said Acts or any provisions of them specified in the application shall extend, and such Acts or provisions shall thereupon after the date of the order extend to such charity in the same manner as if it were not exempted therefrom.

Before making any order under this section the Board shall cause such notices of the proposed order to be given as by section three of the Charitable Trusts Act, 1860, as amended by this Act (d), and by section six of the same Act are required to be given before the making of an order for establishing a scheme (e).

(a) This section is substituted for sect. 63 of the Charit. Trusts Act, 1853, *ante*, which is repealed by sect. 17 of this Act. As to the circumstances under which applications might have been made under the repealed section, see *Hamilton v. Spottiswoode*, 15 W. R. 118, cited *ante*, p. 529.

Who may
apply.

Under sect. 43 of the Charit. Trusts Act, 1853, *ante*, those of the trustees or persons acting in the administration of a charity who may apply to a Court or judge, are in every case (whatever may be the income of the charity) “all or any one or more of the trustees or persons administering” the charity.

Those of the trustees or persons acting in the administration of a charity who may apply to the Board, are the same as those who may apply to the Court (Charit. Trusts Act, 1860, s. 2, *ante*), except that in the case of

charities having a gross annual income of 50*l.* or upwards, the application must be made by "the trustees or persons acting in the administration of the charity or a majority of them."

Sect. 14
(a)—(e).

The conclusion seems to be that applications under the present section are to be made (1), where the income of the charity is less than 50*l.*, by "all or any one or more of the trustees or persons administering" the charity; (2) where the income amounts to 50*l.* or upwards, by "the trustees or persons acting in the administration of the charity or a majority of them."

(b) The Charity Commissioners sitting as a Board: Charit. Trusts Act, 1853, s. 66, *ante*.

(c) See sect. 5 of this Act, *ante*.

(d) Sect. 4, *ante*.

(e) Notice of the intention to make the order must accordingly be given in accordance with sect. 6 of the Charit. Trusts Act, 1860 (as to the mode in which such notice is usually given, see note (c) to that section, *ante*, p. 566), and a proper time allowed for objections and suggestions.

Notice of
intention to
make order.

15. So much of the Charitable Trusts Acts, 1853 to 1869, as authorizes and relates to orders of the Board for the appointment or removal of trustees of a charity (*b*), or for or relating to the vesting of any real (*c*) or personal estate (*d*) belonging thereto, or for the establishment of any scheme for the administration of any charity (*e*), shall extend to buildings registered as places of meeting for religious worship with the Registrar-General of Births, Deaths, or Marriages in England, and *bonâ fide* used as places of meeting for religious worship: Provided that no such order shall be made except upon the application of the trustees or persons acting in the administration of the charity, made in manner provided by section four of the Charitable Trusts Act, 1860, or by this Act (*f*). Save as provided by this section, such buildings shall continue exempted from the Charitable Trusts Acts, 1853 to 1869.

Extension of
part of Acts
to registered
places of
religious
worship (*a*).

(a) Buildings *bonâ fide* used as places of meeting for religious worship, and duly registered, were, by sect. 62 of the Charit. Trusts Act, 1853, totally exempted from the operation of the Charitable Trusts Acts (see note (*b*) to that section, *ante*, p. 524), and the only way in which, previously to the passing of this Act, the benefits of the Acts could be extended to them, was by petition to the Charity Commissioners under sect. 63 of the Act of 1853.

Places of
religious
worship.

The effect of the present section is to remove the exemption so far only as regards the matters specified in it. It will be noted that it does not expressly empower the commissioners to authorize an exchange, lease, sale, or mortgage of a registered place of worship. An authority of this kind can, however, be given under the jurisdiction conferred by the section to establish a scheme. It frequently happens, however, that the trust deed of a chapel, or

Lease,
sale, &c.

Sect. 15
(a)–(f).Scheme
establishing
chapel.

the model deed, by reference to which the trusts are declared, contains express powers of mortgage and sale, with a provision that the purchase-money (after paying off incumbrances, &c.) shall be appropriated to purchasing a new site, and providing a new chapel. The exercise of such powers, where they exist, is not restricted by sect. 29 of the Charit. Trusts Amend. Act, 1855.

Where the chapel belongs to a denomination which has a model deed (see *ante*, pp. 121, 122), a scheme establishing it usually provides that the chapel shall be held upon the trusts of the model deed, except when it was established since the model deed, and without reference to it, in which case there is a presumed intention on the part of the founder that that deed shall not be employed. Where there are special trusts relating to the chapel or its endowment, they are preserved, and the model deed only used so far as applicable. A scheme usually vests the chapel in trustees, and seldom in the official trustee of charity lands.

Providing
new chapel.

As a rule, an order authorizing the sale of a chapel, and the erection of a new one, is not made unless it is satisfactorily shown that the funds required for the erection of the new chapel will be forthcoming. Similarly, in the case of a mortgage, it is usually required to be shown that funds will be forthcoming to pay off the debt within thirty years.

The new chapel must of course be settled on the same trusts as the old one, except as regards matters which do not form an essential part of the trusts, such as provisions as to management, appointment of ministers, and so forth, which may be varied as circumstances require: see *ante*, p. 249.

Invalid
appointment
of trustees
rectified.

Any invalidity in the appointment of trustees of a chapel may often be rectified by an order appointing trustees under this section.

(b) Charit. Trusts Act, 1860, s. 2, *ante*.

(c) *Ibid.*, and Charit. Trusts Amend. Act, 1855, s. 37, *ante*.

(d) Charit. Trusts Amend. Act, 1855, sects. 12, 22, and 37; Charit. Trusts Act, 1860, ss. 2 and 12.

(e) Charit. Trusts Act, 1860, s. 2.

(f) See sect. 5, *ante*.

Assent of
majority
of trustees
required.

The Charity Commissioners hold that they have no power to act upon an application under this section, except with the assent of a majority of the trustees or persons acting in the administration of the charity: see sect. 4 of the Charit. Trusts Act, 1860, *ante*.

Treasury to
fix scale
of fees.

16. The Lords Commissioners of Her Majesty's Treasury may from time to time prescribe a scale of fees to be charged for any business done by the Board under this or any other Act, and may direct whether the same shall be imposed by stamps or otherwise, and by whom and in what manner the same shall be collected, accounted for, and appropriated; and before any such fees shall be taken or received by the said Charity Commissioners every such scale of fees shall be published in the London Gazette. The scale of fees shall be laid before both Houses of Parliament within thirty days after the same has been so prescribed if Parliament

Scale to be
laid before
Parliament.

is then sitting, and if not, within thirty days after the then next meeting of Parliament; and if any such scale shall be disapproved of by both Houses of Parliament within one month after the same shall have been so laid before Parliament, such fees or such parts thereof as shall be disapproved of shall not be charged by the Board (a).

Sect. 16.

(a) No scale of fees has ever been fixed under this section. The services of the Charity Commissioners have always been rendered gratuitously to the charities, the cost of the Commission being borne by the State.

It has often been felt that the expense of superintending the charities of the country ought to be borne by the charities themselves, or, at least, that it ought to be shared by them. The difficulty has, however, been to frame a scale of charges which should not, from their amount or their incidence on particular proceedings, impede or discourage charity trustees from having recourse to the Board.

Correspondence on the subject passed between the Treasury and the Charity Commissioners between the years 1868 and 1879, and a scale of fees was framed by the commissioners upon the lines considered by them to be least likely to interfere with the beneficial carrying on of their work. No decision was, however, arrived at.

In 1879 a Bill, known as the Charity (Expenses and Accounts) Bill (No. 2), 1879, was introduced into Parliament, by which it was proposed to charge on every charity whose accounts are required by law to be annually transmitted to the Board a stamp duty of one per cent. on the gross income. But the Bill failed to become law.

17. The enactments described in the schedule to this Act are hereby repealed; provided that,

Repeal.

- (1.) This repeal shall not affect anything already done or suffered, or any right acquired or order made, under such enactments:
- (2.) Any proceedings already commenced under the enactments hereby repealed shall be proceeded with in the same manner as if this repeal had not been made.

SCHEDULE.

Date.	Title.				
16 & 17 Vict. c. 137	An Act for the better administration of Charitable Trusts				
23 & 24 Vict. c. 136	An Act to Amend the law relating to the administration of Endowed Charities				
	<table border="0"> <tr> <td style="vertical-align: middle;">} In part; namely,</td> <td style="vertical-align: middle;">section sixty-three.</td> </tr> <tr> <td style="vertical-align: middle;">} In part; namely,</td> <td style="vertical-align: middle;">section sixteen.</td> </tr> </table>	} In part; namely,	section sixty-three.	} In part; namely,	section sixteen.
} In part; namely,	section sixty-three.				
} In part; namely,	section sixteen.				

THE CHARITABLE TRUSTS ACT, 1887.

50 & 51 VICT. c. 49.

An Act to amend the Charitable Trusts Acts, 1853 to 1869, so far as respects the officers of the Charity Commissioners for England and Wales and the Official Trustees acting under those Commissioners.

[16th September 1887.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Charitable Trusts Act, 1887, and shall be construed as one with the Charitable Trusts Acts, 1853 to 1869 (*a*), and, together with those Acts, may be cited as the Charitable Trusts Acts, 1853 to 1887.

(*a*) These are the Charit. Trusts Act, 1853, the Charit. Trusts Amend. Act, 1855, and the Charit. Trusts Acts, 1860, 1862, and 1869. See sect. 3 of the Act of 1869, *ante*.

Appointment
of assistant
commis-
sioners.

2.—(1.) The Charity Commissioners for England and Wales (in this Act referred to as “the Board” (*a*)) may from time to time, with the approval in each case of the Commissioners of her Majesty's Treasury (in this Act referred to as the Treasury), appoint assistant commissioners, and may remove any such assistant commissioner.

(2.) The number and salaries of the assistant commissioners under this Act shall be such as the Treasury may from time to time sanction.

Sect. 2.

(3.) Each assistant commissioner under this Act shall have the same powers as an inspector under the Charitable Trusts Acts, 1853 to 1869 (*b*), and the sections of the Charitable Trusts Acts, 1853 to 1869, specified in the First Schedule to this Act, shall have effect as if "assistant commissioner" or "assistant commissioners" were therein substituted for "inspector" or "inspectors," as the case may be, and each assistant commissioner acting under the authority of the Board may exercise the said powers for any purpose of or incidental to any duties imposed on the Board by Parliament under any present or future Act.

(4.) The power of appointing inspectors under the Charitable Trusts Acts, 1853 to 1869, shall cease (*c*).

(a) Any two of the commissioners may form a Board: Charit. Trusts Act, 1853, s. 6, *ante*.

(b) As to the powers of inspectors, see Charit. Trusts Act, 1853, ss. 9—12, 14, 15, 19, 23, 54, 56—58; Charit. Trusts Amend. Act, 1855, ss. 6—8; Charit. Trusts Act, 1860, s. 6; Charit. Trusts Act, 1869, s. 9.

(c) This power was conferred by sect. 1 of the Charit. Trusts Act, 1853, *ante*, and sect. 3 of the Charit. Trusts Amend. Act, 1855, *ante*. The latter section is repealed by sect. 6 of this Act, and the former section is, as far as it relates to "inspectors," repealed by the same section.

3. The signature of any officer of the Board (*a*) (whether assistant secretary or other) who for the time being is authorized by an order of the Board signed by two Commissioners, to act on behalf of the secretary of the Board shall, for all purposes of the Charitable Trusts Acts, 1853 to 1869 (*b*), or any other enactment, be as valid as the signature of the secretary; and a reference in any enactment (*c*) to the signature of the secretary shall include a reference to the signature of such officer, and any document signed by an officer expressed to be so authorized shall be received in evidence without proof of the authority.

Provision for
absence of
secretary.

(a) The Charity Commissioners: see last section.

(b) See note (*a*) to sect. 1 of this Act, *ante*.

(c) See Charit. Trusts Act, 1853, ss. 8, 17, 27; and Charit. Trusts Amend. Act, 1855, ss. 4, 5, 21, 42.

Sect. 4.

Amendment
of Charitable
Trusts Acts
as to Official
Trustees of
Charitable
Funds.

4.—(1.) From and after the date fixed by a regulation (*a*) under this section, such officers of the Board (*b*) as the Board with the approval of the Treasury from time to time appoint shall, in lieu of the persons mentioned in the Charitable Trusts Amendment Act, 1855 (*c*), be the Official Trustees of Charitable Funds (*d*);

Provided that any inspector or officer of the Board, who at the passing of this Act is Official Trustee of Charitable Funds, and is not, after the passing of this Act, appointed to be official trustee shall, while he continues to hold his inspectorship or office, receive not less salary than he received while official trustee.

(2.) From and after the said date, notwithstanding anything in the Charitable Trusts Acts, 1853 to 1869 (*e*), the Treasury may, by regulations to be made or approved by them (*a*), from time to time prescribe:

- (a) the accounts to be kept by the said official trustees and the mode in which and the persons by whom such accounts and the banking accounts (*f*), and any other accounts (*g*) required by the Charitable Trusts Acts, 1853 to 1869, to be kept by or on behalf of the Official Trustees of Charitable Funds, are to be kept;
- (b) the mode in which orders authorized by law for the payment of any money (*h*) to or by the said official trustees or held upon their banking account, or for the transfer of any stock or securities (*i*) to or by the said official trustees, are to be signed, authenticated, and carried into effect; and
- (c) the mode in which the business of the said official trustees generally is to be conducted:

Provided that separate accounts shall continue to be kept for each charity (*j*).

(3.) The accounts of the said official trustees shall be audited by such person and in accordance with such regulations as the Treasury from time to time appoint or prescribe.

Sect. 4.

(4.) A regulation under this section, or an order made under any such regulation, shall be a complete indemnity to the Governor and Company of the Bank of England, and all companies and persons, for any act done pursuant to such regulation or order, and the said Governor and Company, and other companies and persons, shall conform to such regulation or order (*k*).

(a) The regulations which have been made by the Treasury under this section will be found in App. II. to this Book, *post*. They came into effect on the 1st of April, 1889.

(b) The Charity Commissioners, sect. 2, sub-s. (1), of this Act, *ante*.

(c) Sect. 17, *ante*.

(d) As to the official trustees of charitable funds, see Charit. Trusts Act, 1853, s. 51, *ante*.

(e) See note (a) to sect. 1 of this Act, *ante*.

(f) See Charit. Trusts Amend. Act, 1855, ss. 20, 21, *ante*.

(g) Charit. Trusts Act, 1860, s. 18, *ante*.

(h) Charit. Trusts Amend. Act, 1855, ss. 12, 22, 23, 25, 37, and Charit. Trusts Act, 1860, s. 2.

(i) Charit. Trusts Act, 1853, ss. 51, 52; Charit. Trusts Amend. Act, 1855, ss. 12, 22, 25, 37, and Charit. Trusts Act, 1860, s. 2, *ante*.

(j) See Charit. Trusts Act, 1853, s. 52, *ante*.

(k) Cf. Charit. Trusts Amend. Act, 1855, s. 27, and Charit. Trusts Act, 1860, s. 23, by which orders for the transfer of stock, &c., are a similar indemnity.

5. The Official Trustee of Charity Lands shall be authorized and be deemed always to have been authorized to take and hold all such land and estate or interest in land, as, in pursuance of an order of the Board, is conveyed to or vested in him by any deed or assurance or otherwise (*a*).

Declaration
as to power
of Official
Trustee of
Charity Lands
to take and
hold land.

(a) See Charit. Trusts Act, 1860, s. 2, *ante*.

6. The Acts specified in the Second Schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned: Provided that **Repeal.**

(a) this repeal shall not affect anything already done or suffered, or the tenure, salary, or powers of any officer holding office at the passing of this Act;

(b) this repeal, so far as regards the Official Trustees of Charitable Funds, shall take effect on the date on which regulations under this Act in relation to such trustees come into operation.

SCHEDULES.

FIRST SCHEDULE.

SECTIONS OF CHARITABLE TRUSTS ACTS RELATING TO INSPECTORS AND
APPLIED TO ASSISTANT COMMISSIONERS.

Session and Chapter.	Title of Act.	Sections applied.
16 & 17 Vict. c. 137.	The Charitable Trusts Act, 1853.	Sections five, nine, ten, eleven, twelve, fourteen, fifteen, nineteen, twenty-three, fifty-four, fifty-six, fifty-seven, and fifty-eight.
18 & 19 Vict. c. 124.	The Charitable Trusts Amendment Act, 1855.	Sections six, seven, and eight.
23 & 24 Vict. c. 136.	The Charitable Trusts Act, 1860.	Section six.
32 & 33 Vict. c. 110.	The Charitable Trusts Act, 1869.	Section nine.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title of Act.	Part repealed.
16 & 17 Vict. c. 137.	The Charitable Trusts Act, 1853.	So much of section one as relates to the inspectors; section four, section fifty-one down to "charitable funds and" inclusive, and section fifty-two down to the words "each separate charity and" inclusive.
18 & 19 Vict. c. 124.	The Charitable Trusts Amendment Act, 1855.	Section three; in section four the words "or in his absence, of the chief clerk"; in section five the words "or in his absence, of the chief clerk"; section seventeen; in section eighteen the word "present," and the words "to be so appointed"; section twenty, from the words "and the secretary" inclusive to end of section; section twenty-four, from "and the said trustees" inclusive to end of section.
23 & 24 Vict. c. 136.	The Charitable Trusts Act, 1860.	In section seventeen the words "appointed under or in pursuance of the first or secondly recited Act."

THE ENDOWED SCHOOLS ACT, 1869.

32 & 33 VICT. c. 56.

An Act to amend the Law relating to Endowed Schools and other Educational Endowments in England, and otherwise to provide for the Advancement of Education.

[2nd August, 1869.]

WHEREAS the commissioners appointed by her Majesty under letters patent dated the twenty-eighth day of December one thousand eight hundred and sixty-four, to inquire into the education given in schools not comprised within the scope of certain letters patent of her Majesty, bearing date respectively the thirtieth day of June one thousand eight hundred and fifty-eight and the eighteenth day of July one thousand eight hundred and sixty-one, have made their report, and thereby recommended various changes in the government, management, and studies of endowed schools, and in the application of educational endowments, with the object of promoting their greater efficiency, and of carrying into effect the main designs of the founders thereof, by putting a liberal education within the reach of children of all classes (a); and have further recommended other measures for the object of improving education :

And whereas such objects cannot be attained without the authority of Parliament :

(a) The preamble shows that the legislature contemplated the possible removal of sites of schools: *Re Free Grammar School, &c., at Hemsworth*, 12 App. Cas. 444; and see sect. 9 of this Act, *post*.

Be it enacted by the Queen's most Excellent Majesty,

by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited as "The Endowed Schools Act, 1869" (a).

(a) This Act, and the Endowed Schools Acts, 1873 and 1874, may be cited together as the Endowed Schools Acts, 1869, 1873, and 1874 (End. Schools Act, 1874, s. 10, *post*); and all of them are construed as one Act: *ibid*.

Powers not restricted by Court.

The Court is not at liberty in any way to restrict the extensiveness of the powers conferred by the Endowed Schools Acts: *Re Meyricke Fund*, L. R. 7 Ch. at pp. 505, 506, and see note (a) to sect. 1 of the Charit. Trusts Act, 1853, *ante*.

Application of Act.

2. This Act shall not apply to Scotland or Ireland.

Commencement of Act.

3. This Act shall come into operation on the passing thereof (a), which date is in this Act referred to as the commencement of this Act.

(a) 2nd August, 1869.

Definition of "endowment."

4. In this Act, unless the context otherwise requires, the term "endowment" means every description of property, real, personal, and mixed, which is dedicated to such charitable uses as are referred to in this Act, in whomsoever such property may be vested, and in whosoever name it may be standing, and whether such property is in possession or in reversion, or a thing in action (a).

(a) Including endowments vested in her Majesty in right of the Crown or Duchy of Lancaster: End. Schools Act, 1873, s. 4, *post*.

Definition of "educational endowment" (a).

5. In this Act, unless the context otherwise requires, the term "educational endowment" means an endowment (b) or any part of an endowment which, or the income whereof, has been made applicable or is applied for the purposes of education at school of boys and girls or either of them, or of exhibitions (c) tenable at a school

or an university or elsewhere, (whether the same has been made so applicable by the original instrument of foundation or by any subsequent Act of Parliament, letters patent, decree, scheme, order, instrument, or other authority, and) whether it has been made applicable or is applied in the shape—of payment to the governing body (c) of any school or any member thereof, or to any teacher or officer of any school, or to any person bound to teach, or to scholars in any school, or their parents, or—of buildings, houses, or school apparatus for any school, or otherwise howsoever.

Seet. 5:

(a) By sect. 29 of this Act, *post*, endowments attached to a school for the payment of apprenticeship fees, or for the advancement or maintenance or clothing, or otherwise for the benefit of children educated at such school, are to be deemed educational endowments.

Endowments attached to school.

Endowments originally given for charitable purposes, but made applicable to educational purposes by a scheme of the Court of Chancery, are educational endowments: *Ross v. Charity Commissioners*, 7 App. Cas. 463.

Endowments made applicable to education by scheme of Court.

A school endowment for the education at the school of boys and girls, was held to be not the less an educational endowment because the deed of foundation directed that certain persons might continue at the school after having attained twenty-one; and it was held not to be an endowment part of which was applicable to "other charitable uses" within sect. 24 of this Act, *post*: *Re Hodgson's School*, 3 App. Cas. 857.

Continuance at school after twenty-one.

Where a scheme for regulating a charity provided that 300*l.* a year should be devoted to a grammar school, and that the trustees of the charity might, after thirty-six years, apply for liberty to discontinue the payment, it was held that the yearly payment while it lasted was an educational endowment: *Re Free Grammar School, &c., at Hemsworth*, 12 App. Cas. 444.

Income temporarily devoted to education.

Every kind of educational endowment which may be necessary for the completion of a boy's education, whether at school or at a university, is within the definition. In regard to exhibitions at universities, it is not therefore confined to exhibitions connected with a particular school. It applies to all university exhibitions held for purposes of education, whether in connection with a particular school or not: *Re Meyricke Fund*, L. R. 7 Ch. 500.

Exhibitions.

The effect of the End. Schools Acts has been in great measure to render obsolete the whole of the old law as to grammar schools (see *ante*, pp. 162—169). No case turning upon the old law on this subject has been decided since the present Act was passed, or can be decided while the End. Schools Acts remain in force, except in the improbable event of the consent of the Committee of Council on Education to the proceedings being obtained: see End. Schools Act, 1874, s. 6, *post*, p. 655. It is true that the Acts are at present temporary: see note (c) to the same section, *post*. But it is scarcely conceivable, whatever their fate may be, that the legislature will permit a return to the old law, especially as regards religious teaching, subjects of instruction, and removal of teachers.

Effect of End. Schools Acts on old law.

Sect. 5

(a)—(c).

Non-educational charities made educational endowments.
City of London parochial charities.

By sect. 30 of this Act, *post*, dole charities and other non-educational endowments may, by a scheme made under this Act by the Commissioners, with the consent of the governing body, declaring that it is desirable that such charities should be applied for educational purposes, be made educational endowments, and dealt with accordingly.

Under sect. 23 of the City of London Parochial Charities Act, 1883, *post*, the Charity Commissioners are not bound to prepare a scheme under that Act for any endowment which is an educational endowment under this section.

(b) Defined by the last section.

(c) Defined by sect. 7 of this Act, *infra*.

Definition of "endowed school" (a).

6. In this Act, unless the context otherwise requires, the term "endowed school" means a school which is (or if it were not in abeyance would be) wholly or partly maintained by means of any endowment (b): Provided that a school belonging to any person or body corporate shall not by reason only that exhibitions (c) are attached to such school be deemed to be an endowed school.

(a) For schools excepted from this Act, see sect. 8, *post*, and sect. 3 of the End. Schools Act, 1873, *post*.

(b) Defined by sect. 4 of this Act, *ante*.

(c) Defined by the next section.

Interpretation of terms.

7. In this Act, unless the context otherwise requires,—
The term "exhibition" means any exhibition, scholarship, or other like emolument; and the term "exhibitioners" and other terms referring to exhibitions are to be construed accordingly:

The term "governing body" means any body corporate, persons or person (a) who have the right of holding, or any power of government of or management over any endowment (b) or, other than as master, over any endowed school (c), or have any power, other than as master, of appointing officers, teachers, exhibitioners or others, either in any endowed school, or with emoluments out of any endowment:

The term "Committee of Council on Education" means the Lords of the Committee of her Majesty's Privy Council on Education.

Governing body.

(a) Including, in the case of endowments, &c., vested in her Majesty in

right of the Crown or the Duchy of Lancaster, her Majesty: End. Schools Act, 1873, s. 4, *post*.

Sect. 7
(a)–(c).

Where the endowment of a hospital was, under an Act of Parliament, vested in the master and brethren, who were incorporated, and were directed to apply the rents partly in repairs, partly in payments to themselves, and partly in other payments, it was held that they were clearly the governing body: *Att.-Gen. v. Moises*, stated in App. III. to this Book, *post*.

(b) Defined by sect. 4 of this Act, *ante*.

(c) Defined by the last section.

8. Nothing in this Act, save as in this Act expressly provided, shall apply—

(1.) To any school mentioned in section three of the Public Schools Act, 1868 (b), or to the endowment thereof:

(2.) To any school which, on the first of January one thousand eight hundred and sixty-nine, was maintained wholly or partly out of annual voluntary subscriptions (c), and had no endowment except school buildings or teachers' residences, or playground or gardens attached to such buildings or residences:

(3.) To any school which, at the commencement of this Act, is in receipt of an annual grant out of any sum of money appropriated by Parliament to the civil service, intituled "For Public Education in Great Britain" (d), or to the endowment thereof; unless such school is a grammar school, as defined by the Act of the session of the third and fourth years of the reign of her present Majesty, chapter seventy-seven (e), or a school a department of which only is in receipt of such grant:

(4.) To any school (unless it is otherwise subject to this Act) which is maintained out of any endowment the income of which may, in the discretion of the governing body thereof, be wholly applied to other than educational purposes, or to such endowment:

(5.) To any school (unless it is otherwise subject to

Nothing in this Act, except as expressly provided, to apply to certain schools herein named (a).
31 & 32 Vict. c. 118.

Sect. 8.

this Act) which receives assistance out of any endowment the income of which may, in the discretion of the governing body of such endowment, be applied to some other school:

- (6.) To any endowment applicable and applied solely for promoting the education of the ministers of any church or religious denomination, or for teaching any particular profession, or to any school (unless it is otherwise subject to this Act) which receives assistance out of such endowment:
- (7.) To any school which, during the six months before the first of January one thousand eight hundred and sixty-nine, was used solely for the education of choristers, or to the endowment of any such school if applicable solely for such education (*f*).

(a) By sect. 3 of the End. Schools Act, 1873, *post*, an endowed school (not being a grammar school within 3 & 4 Vict. c. 77), which is an elementary school within the meaning of the Elem. Educ. Act, 1870 (33 & 34 Vict. c. 75), and the average income of which from its endowments does not exceed 100*l.* a year, is also excepted.

Public
schools.

(b) 31 & 32 Vict. c. 118. These are Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby, and Shrewsbury.

(c) Cf. the exception of charities supported wholly by "voluntary contributions" or partly by "voluntary subscriptions" from the Charit. Trusts Acts: Charit. Trusts Act, 1853, s. 62, *ante*, and note (*d*) thereto.

(d) See the Elem. Educ. Act, 1870 (33 & 34 Vict. c. 75), s. 75 of which is as follows:—

Elem. Educ.
Act, 1870,
s. 75.

"Where any school or any endowment of a school was excepted from the Endowed Schools Act, 1869, on the ground that such school was at the commencement of that Act in receipt of an annual parliamentary grant, the governing body (as defined by that Act) of such school or endowment may frame and submit to the Education Department a scheme respecting such school or endowment.

"The Education Department may approve such scheme with or without any modifications as they think fit.

"The same powers may be exercised by means of such scheme as may be exercised by means of any scheme under the Endowed Schools Act, 1869; and such a scheme, when approved by the Education Department, shall have effect as if it were a scheme made under that Act.

"A certificate of the Education Department that a school was at the commencement of the Endowed Schools Act, 1869, in receipt of an annual parliamentary grant shall be conclusive evidence of that fact for all purposes."

- (e) See sects. 24 and 25. The Grammar Schools Act is printed in App. I. to this Book, *post*.
 (f) See also sect. 14, sub-s. (2), of this Act, and note thereto, *post*.

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 (e), (f).

Reorganization of Endowed Schools.

9. The Commissioners (appointed as in this Act mentioned)(b), by schemes made during the period(c), in the manner and subject to the provisions in this Act mentioned, shall have power, in such manner as may render any educational endowment(d) most conducive to the advancement of the education of boys and girls, or either of them, to alter, and add to any existing, and to make new trusts directions and provisions in lieu of any existing, trusts directions and provisions which affect such endowment, and the education promoted thereby, including the consolidation of two or more such endowments, or the division of one endowment into two or more endowments.

Schemes for application of educational endowments (a).

(a) As to the provisions of this Act with regard to the contents of schemes, see sects. 10 to 24, *post*. See also *ante*, pp. 170—172.

And as to the procedure for making schemes, see sects. 31 to 43 of this Act, and sects. 12 to 15 of the End. Schools Act, 1873; and see note to sect. 32 of this Act, *post*.

The removal of the site of a school is within the powers conferred by this section: *Re Free Grammar School, &c., at Hemsworth*, 12 App. Cas. 414.

Removal of site.

A provision in a proposed scheme that certain endowments which had previously been applied in carrying on the schools of a particular parish should thenceforth be applied in exhibitions for a larger area of schools, was held to be within the powers of the commissioners: *Re St. Leonard, Shore-ditch, Parochial Schools*, 10 App. Cas. 304.

Enlargement of area.

(b) Sect. 31, now repealed. By sect. 1 of the End. Schools Act, 1874, *post*, the powers and duties of the Endowed Schools Commissioners were transferred to the Charity Commissioners; and by sect. 10 of the same Act commissioners in this Act means the Charity Commissioners.

Transfer of powers to Charity Commissioners.

(c) See sect. 59 of this Act, now repealed. As to the continuance of these powers, see sect. 6 of the End. Schools Act, 1874, *post*.

(d) Defined by sect. 5, *ante*.

10. The Commissioners(b) by any scheme relating to an educational endowment(c) made during the period(d), in the manner and subject to the provisions

Schemes as to governing bodies (a).

Sect. 10. in this Act mentioned, shall have power to alter the constitution, rights, and powers of any governing body (*e*) of an educational endowment, and to incorporate any such governing body, and to establish a new governing body, corporate or unincorporate, with such powers as they think fit, and to remove a governing body, and in the case of any corporation (whether a governing body or not) incorporated solely for the purpose of any endowment dealt with by such scheme, to dissolve such corporation.

(*a*) Certain exceptions from the power to make schemes interfering with the constitution of a governing body are made by sect. 14, sub-ss. (2), (3) and (4) of this Act, *post*.

Subject to certain provisions, endowments partly applicable to educational purposes and partly to other charitable uses, and the governing bodies thereof, may be dealt with as though the whole were educational endowments: sect. 24 of this Act, *post*.

Representative
governors.

In constituting bodies of governors under these Acts, the Endowed Schools Commissioners, following the recommendation of the Schools Inquiry Commissioners, introduced to a large extent the element of representation.

This practice has been followed by the Charity Commissioners not only in framing schemes under these Acts, but also in schemes under the Charit. Trusts Acts. This subject is more fully dealt with in n. (*a*) to sect. 2 of the Charit. Trusts Act, 1860, *ante*, pp. 560, 561.

The constitution of a body of governors will be understood from a perusal of scheme No. V., in App. II. to this Book, *post*.

(*b*) Now the Charity Commissioners: see note (*b*) to the last section.

(*c*) Defined by sect. 5 of this Act, *ante*.

(*d*) As to the continuance of these powers, see sect. 6 of the End. Schools Act, 1874, *post*.

(*e*) Defined by sect. 7 of this Act, *ante*.

Educational
interests of
persons
entitled to
privileges (*a*).

11. It shall be the duty of the Commissioners (*b*) in every scheme which abolishes or modifies any privileges or educational advantages to which a particular class of persons are entitled (*c*), and that whether as inhabitants of a particular area or otherwise, to have due regard to the educational interests of such class of persons (*d*).

(*a*) By sect. 5 of the End. Schools Act, 1873, *post*, regard is also to be paid to educational interests of persons in a particular class of life.

If the scheme does not observe the provisions of this section, the governing body may appeal by petition to her Majesty in Council: sect. 39, sub-s. (4).

of this Act, *post*: see *Re Shaftoe's Charity*, 3 App. Cas. at p. 876, cited in n. (a) to that section.

Sect. 11
(a)–(d).

(b) Now the Charity Commissioners: see note (b) to sect. 9 of this Act, *ante*.

(c) "Entitled" in this section means legally entitled: *Re Sutton Coldfield Grammar School*, 7 App. Cas. 91; *Re Free Grammar School, &c., at Hemsworth*, 12 App. Cas. 444. "Entitled."

"A person is not entitled simply because he has enjoyed, by the permission or the bounty of another, some benefit either for a longer or shorter period": *Re Sutton Coldfield Grammar School*, 7 App. Cas. at pp. 94, 95, per Jessel, M. R.

Where a scheme provided for the maintenance of a grammar school at Hemsworth, open to all comers on payment of substantial fees, it was held that that did not make the inhabitants of Hemsworth "entitled" to have the school maintained there, so as to render improper a provision in a new scheme for the removal of the site: *Re Free Grammar School, &c., at Hemsworth, supra*.

Where an existing scheme provided for (*inter alia*) elementary schools where children of poor persons were to be clothed and educated, it was held that persons of the class of life in question were "entitled" to the benefit of the schools: *Re Sutton Coldfield Grammar School, supra*.

(d) In *Re Sutton Coldfield Grammar School, supra*, the proposed new scheme provided for the application to the elementary schools to the benefits of which it was held that certain classes of persons were "entitled," of a larger amount of the income of the charity than they had been entitled to under the previous scheme, though less than had in fact been expended upon them, and it was held that "due regard" had been paid to the educational interests of the classes of persons in question. "Due regard."

In *Re Hodgson's School*, 3 App. Cas. 857, it was directed by the deed of foundation that (1) all persons of the name of Hodgson who might think fit to attend (such persons being also allowed to remain beyond the age of twenty-one); (2) all children of poor persons within the parish of Aikton not having real estate worth 20*l.* per annum; and (3) all children of poor persons within two other parishes not having real estate worth 12*l.* per annum, should be educated at the school without charge, and the benefits of the foundation were not open to any other persons. The scheme proposed paid no regard to the educational interests of the classes of persons above mentioned, except by giving some of them a certain preference in competing for scholarships. It was held that it did not pay due regard to the educational interests of such classes of persons, and it was accordingly remitted to the commissioners.

With regard to what in that case would have been "due regard," the Court said (at p. 871), "(their Lordships) do not adopt the view that any new privilege, preference, or exclusive advantage need be given, by any scheme under these Acts, to a class originally favoured, when the commissioners think it right to abolish the original privilege or advantage. In the present case, it appears to them, that if children named Hodgson, who can conveniently attend the school as day scholars, and children from the three parishes originally favoured, are recognized as entitled to be educated, under reasonable regulations, in this school, no preference or advantage need be conferred upon them beyond this, that as the school is to be limited to one hundred

Sect. 11
(d).

children, it may probably be right to give them priority of admission, *ceteris paribus*, if the number of duly qualified applicants for admission should at any time exceed the number of vacancies for the time being in the school. As to age and as to examination (if the governors should think it right to submit candidates for admission to a competitive or any other kind of preliminary examination), their Lordships see no reason why they (the Hodgsons included) should not be placed on exactly the same footing with other children, not of the favoured classes; who may, if found better qualified in these respects, be admitted in preference to them. And their Lordships think that due regard may well be paid to the educational interests of the Hodgsons, without allowing them to remain in the school beyond the age which may be limited as to other scholars."

Where the scheme of the Charity Commissioners increased the amount of tuition fees previously payable by a certain class of boys, and added the condition that the trustees should be satisfied that the parents of the boys required aid, it was held that it did not fail in due regard to their educational interests: *Ross v. Charity Commissioners*, 7 App. Cas. 463.

Any substantial privilege adapted to the altered constitution of the school, in lieu of the privileges abolished, would be sufficient to show that "due regard" had been paid to privileges and educational advantages previously existing: *Re Free Grammar School, &c., at Hemsworth*, 12 App. Cas. at p. 451. In that case the old scheme provided that a grammar school should be maintained in a particular parish, and that six boys should be elected "from poor men's children, being husbandmen or men of occupations," in six specified parishes, to be educated free of cost, and that out of these six boys one scholar should be elected with a certain emolument. The proposed new scheme continued the school with another school at a distance, and provided for the election, from boys who had for not less than three years been scholars in any of the public elementary schools in the six parishes, of six scholars to be entitled to free education and 10*l.* a-year. It was held that due regard had been paid to the privileges of the poor inhabitants of the six parishes.

Schemes
to extend
benefit to
girls.

12. In framing schemes under this Act, provision shall be made so far as conveniently may be for extending to girls the benefits of endowments.

Saving of
interest of
foundationer,
master,
governing
body, &c. (a).

13. It shall be the duty of the Commissioners (b) to provide in any scheme for saving or making due compensation for the following vested interests (c), namely,

- (1.) The interest of any boy or girl who was at the time of the passing of this Act on the foundation of any endowed school (d):
- (2.) The tenure by any person of any exhibition (e) dealt with by any such scheme which was held by him at the time of the passing of this Act (f):

- (3.) Such interest as any teacher or officer in any endowed school (*g*) appointed to his office before the passing of the Endowed Schools Act, 1868 (*h*), may have : Sect. 13.
31 & 32 Vict.
c. 32.
- (4.) Such interest as any person may have in any pension or compensation allowance to which he was entitled at the passing of the Endowed Schools Act, 1868 (*h*):
- (5.) Such interest as any member of the governing body (*e*) of any educational endowment (*i*) appointed to his office before the passing of the Endowed Schools Act, 1868 (*h*), may have in any emolument payable to him as such, or in any right of patronage which has a marketable value, and is capable of being sold by him :

It shall also be the duty of the Commissioners (*b*) in any scheme relating to any endowed school (*d*) to have regard to the rights of patronage which may be at the passing of this Act (*f*) exercised by any member of the governing body of such school in consequence of any gift or donation made by him.

(a) If the provisions of this section are not observed, the governing body of the endowment to which the scheme relates, or any person or body corporate directly affected, may appeal by petition to her Majesty in Council: sect. 39, sub-s. (2), of this Act, *post*.

(b) Now the Charity Commissioners: see note (*b*) to sect. 9 of this Act, *ante*.

(c) When a vested interest is continued and not taken away by a proposed scheme, the case is one for saving of rights, and not for compensation. Such an interest cannot be partially taken away and partially compensated for: see *Re Alleyn's College, Dulwich*, 1 App. Cas. at p. 81. Continuance
of vested
interest.

(d) This provision has, of course, been long since exhausted: see *Re Free Grammar School, &c., at Hemsworth*, 12 App. Cas. at p. 452.

(e) Defined by sect. 7 of this Act, *ante*.

(f) 2nd August, 1869.

(g) Defined by sect. 6 of this Act, *ante*.

(h) 31 & 32 Vict. c. 32, passed 25th June, 1868: see *ante*, p. 456.

In *Re Alleyn's College, Dulwich*, 1 App. Cas. 68, the office of master of Alleyn's College of God's Gift at Dulwich was an office of which both the value and the duties were defined by statute. The statute provided for his dismissal from office by a certain majority at a meeting constituted and convened in a particular manner of the governors of the college. No such meeting had ever been convened, and no such majority had ever had existence. Teacher or
officer
appointed
before 25th
June, 1868.

Sect. 13
(h), (i).

By a proposed scheme the emoluments which the master was to receive were diminished considerably below those to which he was entitled under the Act. It was held, on appeal, that the master had a vested interest in the office and the emoluments thereof, and those interests not being saved by the scheme, it was remitted to the commissioners.

Lord Selborne said (at p. 76), "It would be very difficult for their Lordships, having to look to substance and not to form or technicality in such a case, to accede to the argument that any teacher or officer of a school who had an interest, the value and nature of which was defined by Act of Parliament, and who had not been deprived of that interest by any lawful authority, would not be entitled *prima facie* under that clause (sect. 13, sub-s. (3)), to have his interest saved or compensated." Cf. also cases cited in note (d) to sect. 11 of this Act, *ante*.

(i) Defined by sect. 5 of this Act, *ante*.

Not to authorize schemes for interfering with modern endowments, cathedral schools, &c.

14. Nothing in this Act shall authorize the making of any scheme interfering—

- (1.) with any endowment (a), or part of an endowment, (as the case may be,) originally given to charitable uses, or to such uses as are referred to in this Act, less than fifty years before the commencement of this Act (b), unless the governing body (c) of such endowment assent to the scheme (d):
- (2.) with the constitution of the governing body of any school wholly or partly maintained out of the endowment of any cathedral or collegiate church, or forming part of the foundation of any cathedral or collegiate church, unless the dean and chapter of such church assent to the scheme (e):
- (3.) with the constitution of the governing body of any school, which governing body is subject to the jurisdiction of the governing body of the people called Quakers, or of the congregation of United Brethren called Moravians, unless the governing body of such school assent to the scheme:
- (4.) with the constitution of the governing body of any school or with any exhibition (other than one restricted to any schools, or school or district (f)), forming part of the foundation of any

college in Oxford or Cambridge, unless the college assent to the scheme (g). Sect. 14.

(a) Defined by sect. 4 of this Act, *ante*.

(b) 2nd August, 1869.

(c) Defined by sect. 7 of this Act, *ante*.

(d) Endowments originally given for charitable uses more than fifty years before the Act, but appropriated to educational purposes by a scheme and order of the Court of Chancery made within that period, are not within this sub-section: *Ross v. Charity Commissioners*, 7 App. Cas. 463.

A doubt has been suggested whether an endowment originally given to charitable uses since the date of this Act is within this sub-section.

By sect. 25 of this Act, *post*, where an endowment originally given to charitable uses less than fifty years before the commencement of the Act is so mixed up with an old endowment as not to be conveniently separable, the whole is to be deemed an endowment originally given to charitable uses more than fifty years before the Act. And where they are not so mixed up, provision is made for their apportionment: sect. 26 of this Act.

(e) By sect. 27 of this Act, *post*, schemes may be framed, with the consent of the Ecclesiastical Commissioners, for making increased provision for cathedral schools out of any estates of the Church vested in the Ecclesiastical Commissioners. Cathedral schools.

Such schools are excepted from the provisions of this Act with regard to religion: sect. 19 of this Act, *post*. Cathedral schools are also excepted from sect. 20, which authorizes a transfer of visitatorial powers to her Majesty to be exercised through the Charity Commissioners; and by sect. 8, sub-s. (7), of this Act, *ante*, schools, during the six months preceding 1st January, 1869, used solely for the education of choristers are excepted from the Act. Cathedral schools are subject to the Charitable Trusts Acts; Charit. Trusts Act, 1853, s. 62, *ante*, p. 523.

(f) "Wales" is a district within this clause: *Re Meyricke Fund*, L. R. 7 Ch. 500. University exhibitions.

Wherever there is a restriction the power of the commissioners is let in, whether the restriction is to a school or a district (*ibid.*); in that case, it was held that an endowment, of which the principal and fellows of Jesus College Cambridge were the trustees, applicable for exhibitions for persons from certain counties in North Wales, was within the jurisdiction of the commissioners.

(g) See further, with regard to exhibitions at colleges of universities, sect. 38 of this Act, *post*.

15. In every scheme (except as hereafter mentioned) (b) relating to any endowed school (c) or educational endowment (d) the Commissioners (e) shall provide that the parent or guardian of, or person liable to maintain or having the actual custody of, any scholar attending such school as a day scholar, may claim, by notice (f) in writing addressed to the principal teacher of such

As to religious education in day schools (a).

Sect. 15. school, the exemption of such scholar from attending prayer or religious worship, or from any lesson or series of lessons on a religious subject, and that such scholar shall be exempted accordingly, and that a scholar shall not by reason of any exemption from attending prayer or religious worship, or from any lesson or series of lessons on a religious subject, be deprived of any advantage or emolument in such endowed school or out of any such endowment to which he would otherwise have been entitled, except such as may by the scheme be expressly made dependent on the scholar learning such lessons.

They shall further provide that if any teacher, in the course of other lessons at which any such scholar is in accordance with the ordinary rules of such school present, teaches systematically and persistently any particular religious doctrine from the teaching of which any exemption has been claimed by such a notice as is in this section before provided, the governing body (*g*) shall, on complaint made in writing to them by the parent, guardian, or person having the actual custody of such scholar, hear the complainant, and inquire into the circumstances, and, if the complaint is judged to be reasonable, make all proper provisions for remedying the matter complained of.

(*a*) Where a scheme gives the governing body power to make regulations as to religious instruction, it must provide for a year's notice of any alteration in such regulations: End. Schools Act, 1873, s. 11, *post*.

(*b*) Sect. 19 of this Act, *post*. The provisions of this section must be embodied in the scheme, unless the case falls within sect. 19: *Re Free Grammar School, &c. at Hemsworth*, 12 App. Cas. at p. 447.

(*c*) Defined by sect. 6 of this Act, *ante*.

(*d*) Defined by sect. 5 of this Act, *ante*.

(*e*) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

(*f*) As to the service of notices, see sect. 56 of this Act, *post*.

(*g*) Defined by sect. 7 of this Act, *ante*.

As to
religious
education
in boarding
schools (*a*).

16. In every scheme (except as hereinafter mentioned) (*b*) relating to an endowed school the Commissioners (*c*) shall provide that if the parent or guardian of,

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or person liable to maintain or having the actual custody of, any scholar who is about to attend such school, and who but for this section could only be admitted as a boarder, desires the exemption of such scholar from attending prayer or religious worship, or from any lesson or series of lessons on a religious subject, but the persons in charge of the boarding houses of such school are not willing to allow such exemption, then it shall be the duty of the governing body (*d*) of such school to make proper provisions for enabling the scholar to attend the school and have such exemption as a day scholar, without being deprived of any advantage or emolument to which he would otherwise have been entitled, except such as may by the scheme be expressly made dependent on the scholar learning such lessons. And a like provision shall be made for a complaint by such parent, guardian, or person as in the case of a day school (*e*).

(*a*) See note (*a*) to the last section.

(*b*) Sect. 19 of this Act, *post*. See note (*b*) to the last section.

(*c*) The Charity Commissioners: see sects. 1 and 10 of the End. Schools Act, 1874, *post*.

(*d*) Defined by sect. 7 of this Act, *ante*.

(*e*) See the last section.

17. In every scheme (except as hereinafter mentioned) (*b*) relating to any educational endowment the Commissioners (*c*) shall provide that the religious opinions of any person, or his attendance or non-attendance at any particular form of religious worship, shall not in any way affect his qualification for being one of the governing body of such endowment.

Governing body not to be disqualified on ground of religious opinions (*a*).

(*a*) By sect. 6 of the End. Schools Act, 1873, *post*, it is provided that where, under the express terms of the original instrument of foundation, the holder of any particular office is a member of the governing body, nothing in the present section is to prevent the holder for the time being of such office from being retained as such member.

Under this section "it has been decided by her Majesty in Council that . . . the holder for the time being of an ecclesiastical office in the Church of England cannot lawfully be made an *ex officio* member of the governing body of an educational endowment; the commissioners being by that section required to provide, in every scheme to which it is applicable, 'that the reli-

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(a), (b), (c).

gious opinions of any person shall not in any way affect his qualification for being one of the governing body.' The ground of that decision may be presumed to have been that particular religious tenets are implied in, and are necessary conditions of, the tenure of an ecclesiastical office, and must therefore 'affect the qualification' consisting in the incumbency of such an office": per Lord Selborne in *Re Hodgson's School*, 3 App. Cas. at pp. 865, 866.

(b) Sect. 19 of this Act, *infra*. See note (b) to sect. 15 of this Act, *ante*.

(c) Now the Charity Commissioners: see sects. 1 and 10 of the End. Schools Act, 1874, *post*.

Masters
not to be
required to
be in holy
orders (a).

18. In every scheme (except as hereinafter mentioned) (b) relating to an endowed school the Commissioners (c) shall provide that a person shall not be disqualified for being a master in such school by reason only of his not being or not intending to be in holy orders.

(a) Schemes must also provide that masters need not be licensed by the ordinary: sect. 21 of this Act, *post*. By sect. 18 of the End. Schools Act, 1873, *post*, a graduate of any university in the United Kingdom is to be deemed qualified to be a master, notwithstanding that the statutes require him to be a graduate of Oxford or Cambridge.

(b) Sect. 19 of this Act, *infra*. See note (b) to sect. 15 of this Act, *ante*. See, also, *Ross v. Charity Commissioners*, 7 App. Cas. 463, cited in note (b) to sect. 19, *post*.

(c) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

Schools ex-
cepted from
provisions as
to religion.

19. A scheme relating to—

- (1.) any school which is maintained out of the endowment of any cathedral or collegiate church (a), or forms part of the foundation of any cathedral or collegiate church; or
- (2.) any educational endowment (b), the scholars educated by which are, in the opinion of the Commissioners (c) (subject to appeal to her Majesty in Council as mentioned in this Act) (d), required by the express terms of the original instrument of foundation or of the statutes or regulations made by the founder or under his authority, in his lifetime or within fifty years after his death, (which terms have been observed down to the commencement of this Act,) to learn or to be

instructed according to the doctrines or formularies of any particular church, sect, or denomination,

is excepted from the foregoing provisions respecting religious instruction, and attendance at religious worship(*e*), (other than the provisions for the exemption of day scholars from attending prayer or religious worship, or lessons on a religious subject, when such exemption has been claimed on their behalf,) and respecting the qualification of the governing body(*f*) and masters(*g*) unless the governing body, constituted as it would have been if no scheme under this Act had been made(*h*), assents to such scheme.

And a scheme relating to any such school or endowment shall not, without the consent of the governing body thereof, make any provision respecting the religious instruction or attendance at religious worship of the scholars, (except for securing such exemption as aforesaid,) or respecting the religious opinions of the governing body or masters(*i*).

(*a*) With regard to cathedral schools, see note (*e*) to sect. 14 of this Act, *ante*.

(*b*) Defined by sect. 5 of this Act, *ante*.

By sect. 7 of the End. Schools Act, 1873, *post*, this sub-section is extended to educational endowments originally given to charitable uses, since the Toleration Act (1 Will. & M. c. 18), if, by the express terms of the original instrument of foundation, or of the statutes or regulations made by the founder, or under his authority in his lifetime, or within fifty years after his death, it is directed that the majority of the governing body, or persons electing the governing body, or the principal teachers or scholars, shall be members of a particular denomination.

Denominational charities.

This sub-section requires the denominational purpose to be manifested by the express terms either of the original instrument of foundation, or of some statutes or regulations. It is clear that the words "original instrument of foundation," and "statutes," cannot be satisfied without some instrument in writing. It is, perhaps, not necessary to say that "regulations" within the meaning of the clause could not be oral, but there would be great difficulty in the proof of any such oral regulations, even if they were binding. It would be necessary to find, by proper evidence, the express terms of some regulations made by the founder, or by his authority, and if by his authority, then not later than fifty years after his death. Not only every uncertain, but also every merely probable, implication from practice alone is excluded. "There is all the difference in the world between a practice for

Must be manifested in express terms.

Sect. 19
(b).

Charities
not denomi-
national.

the time being, and statutes or regulations expressly requiring that such a practice should always be observed. The clause in the Act would not be satisfied without statutes or regulations in express terms; and the manifest purpose of the clause would be defeated as to almost every school in the kingdom, not of very recent origin indeed, if it were held that mere practice should be taken as sufficient evidence of there having been, at some time or other, regulations made under the authority of the founder expressly requiring that practice always to be observed": per Lord Selborne, in *Re St. Leonard, Shoreditch, Parochial Schools*, 10 App. Cas. at pp. 307, 309.

In *Ross v. Charity Commissioners*, 7 App. Cas. 463, the original foundation made no provision for the religious education of scholars, but by a scheme approved by the Court of Chancery in 1867, it was provided that the masters should be members of the Church of England, and that the instruction to be given should "include the principles of the Christian religion according to the doctrine of the Church of England." It was held that the case did not fall within this clause, that sect. 18 of this Act consequently applied, and that a clause in a proposed scheme that "no person shall be disqualified for being a master in such school by reason only of his not being, or not intending to be, in holy orders," was in accordance with the Act. And their Lordships said (at p. 470), "The words of the Act clearly apply to the original foundation by the founder or donor of the property for charitable uses, and to statutes and regulations made by him, and cannot be held to comprehend a scheme of the Court of Chancery appropriating to educational purposes property which had been already given for charitable uses."

In *Re Free Grammar School, &c. at Hemsworth*, 12 App. Cas. 444, a scheme established by the Court of Chancery in 1861, which was the instrument by which the endowment was then governed, provided that religious instruction according to the Church of England should be given "to such of the boys whose parents, or persons standing to them *in loco parentis*, shall be in communion with that Church, and to such other boys whose parents, or other persons standing to them *in loco parentis*, shall not object in writing to their receiving such instruction." It was held, that the endowment was not one the scholars educated under which were required to be instructed according to the doctrines of any particular church; and that whether, under the original statutes, the charity was denominational or not was immaterial, because the effect of the scheme was that the terms of the original statute had not "been observed down to the commencement of this Act."

In *Re St. Leonard, Shoreditch, Parochial Schools*, 10 App. Cas. 304, a charity school had been founded by subscriptions in 1705 and 1706, and had no instrument of foundation or statute, and there was no evidence that there had ever been regulations within this clause, except certain entries in books, showing that, as a matter of fact, the children were taken to church, and probably instructed in the catechism, and, except certain regulations made seventy years after the foundation, as to which there was no evidence that they were made by the authority of the founders. It was held that the charity was not denominational within this clause.

Original
subscribers
founders.

Where a charity is established by subscription the original subscribers only are the founders, and subsequent subscriptions do not constitute a new foundation, but are accretions to the original foundation: *Re St. Leonard, Shoreditch, Parochial Schools*, *supra*.

(c) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, **Sect. 19**
post. (c)–(i).

(d) Sect. 39, sub-s. (1), *post.*

(e) Sects. 15 and 16, *ante.*

(f) Sect. 17.

(g) Sect. 18.

(h) See sect. 10 of this Act, *ante.*

(i) The object of the concluding clause of this section is only “to fortify the former part of the same section, and to prevent the commissioners from making particular religious opinions more or less necessary in these cases than they were before, to qualify generally for the office of governor”: per Lord Selborne, in *Re Hodgson’s School*, 3 App. Cas. at p. 866. In that case a clause in a proposed scheme providing that the rector of the parish should be an *ex officio* governor of a Church of England school, was held not to contravene this clause; for “no religious opinions are implied in the office of rector of the parish . . . except those which, independently of the scheme, would have been held by the Court of Chancery to be necessary to qualify for the office of governor or trustee”: *ibid.* at p. 866; and cf. sect. 17 of this Act, *ante*, and n. (a) thereto. See also, *ante*, p. 192.

20. In every scheme the Commissioners (a) may, if they think fit, provide for the transfer to her Majesty of all rights and powers reserved to, belonging to, claimed by, or capable of being exercised by any person, persons, or body corporate as visitor (b) of the endowed school or educational endowment to which the scheme relates, except in the case of cathedral schools (c). Transfer of jurisdiction of visitors.

They shall also provide that such rights and powers as aforesaid, if vested in her Majesty at the commencement of this Act, or if transferred to her Majesty by the scheme, shall be exercised only through and by the Charity Commissioners for England and Wales.

(a) The Charity Commissioners: End. Schools Act, 1874, sects. 1 and 10, *post.*

(b) With regard to visitatorial powers, see Chap. IV., *ante.*

(c) With regard to cathedral schools, see n. (e) to s. 14 of this Act, *ante.*

21. In every scheme the Commissioners (a) shall provide for the abolition of all jurisdiction of the ordinary relating to the licensing of masters in any endowed school, or of any jurisdiction arising from such licensing. Abolition of jurisdiction of ordinary as to licensing masters.

(a) The Charity Commissioners: End. Schools Act, 1874, sects. 1 and 10, *post.*

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Tenure of
office of
teachers.

22. In every scheme the Commissioners (*a*) shall provide for the dismissal at pleasure of every teacher and officer in the endowed school to which the scheme relates, including the principal teacher, with or without a power of appeal in such cases and under such circumstances as to the Commissioners (*a*) may seem expedient.

(*a*) The Charity Commissioners: End. Schools Act, 1874, ss. 1, 10, *post*.

General pro-
visions (*a*).

23. In any scheme the Commissioners (*b*) may insert all powers and provisions that may be thought expedient for carrying its objects into effect.

Clauses
giving com-
missioners
visitatorial
jurisdiction.

(*a*) In *Re Hodgson's School*, 3 App. Cas. 857, it was held that the introduction into a proposed scheme of clauses establishing in the commissioners a species of visitatorial jurisdiction, sufficient to indemnify the governors and to bind the objects of the charity within certain limits, was within the powers conferred by this section. The clauses in question were as follows—(1) Any question affecting the regularity or the validity of any proceeding under this scheme shall be determined conclusively by the Charity Commissioners upon such application made to them for the purpose, as they think sufficient. (2) If any doubt or question arises among the governors as to the proper construction or application of any of the provisions of this scheme, the governors shall apply to the Charity Commissioners for their opinion and advice thereon, which opinion and advice, when given, shall be binding on the governors and all persons claiming under the trust who shall be affected by the question so decided.

Under clause (1), above cited, the Court has refused to decide the question of the validity of the election of a governor where it had been already decided by the Charity Commissioners: *Reg. v. Wilson*, W. N. 1888, 12.

Clauses of the kind above mentioned are inserted by the Charity Commissioners both in schemes under the Endowed Schools Acts and in schemes under the Charitable Trusts Acts: see Schemes, Nos. I., II. and V. in App. II. to this Book, *post*.

See also generally, as to the powers intrusted to the commissioners by these Acts, *Re Meyricks Fund*, L. R. 7 Ch. 500.

(*b*) The Charity Commissioners: End. Schools Act, 1874, sects. 1 and 10, *post*.

Apportion-
ment of
mixed en-
dowments.

24. Where part of an endowment is an ^xeducational endowment within the meaning of this Act (*a*), and part of it is applicable or applied to other charitable uses (*b*), the scheme shall be in conformity with the following provisions (except so far as the governing body of such endowment assent to the scheme departing therefrom); that is to say:

(1.) The part of the endowment or annual income

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2015: 2016: 2017: 2018: 2019: 2020: 2021:

derived therefrom which is applicable to such other charitable uses shall not be diverted by the scheme from such uses (c);

- (2.) The part of the endowment or annual income so applicable to such other charitable uses shall be deemed to be the proportion which, in the opinion of the Commissioners (d), subject to appeal to Her Majesty in Council (e), is the average proportion which has during the three years before the passing of this Act (f) been appropriated as regards capital or applied as regards income to such uses, or (if that proportion differs from the proportion which ought in accordance with the express directions of the instrument of foundation or the statutes or regulations (g) during the said three years governing such endowment to have been so appropriated or applied) which ought to have been so appropriated or applied;
- (3.) If the proportion applicable to other charitable uses exceeds one half of the whole of the endowment, the governing body of such endowment existing at the date of the scheme shall, so far as regards its non-educational purposes, remain unaltered by the scheme (h);
- (4.) Where the governing body remains so unaltered, that body shall pay or apply for educational purposes such proportion as under the former provisions of this section is applicable to those purposes, or such less sum as may be fixed by the Commissioners, subject to appeal to Her Majesty in Council;
- (5.) Where during the said three years any portion of the endowment as existing at the commencement of such three years, or the annual income of such portion, has been accumulated and not applied to any purpose, the Charity Commissioners for England and Wales shall determine

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whether such portion or income is to be considered, for the purposes of this section, as having been appropriated or applied for educational purposes, or for other charitable uses ;

- (6.) Where by reason of the Act of Parliament, letters patent, decree, scheme, order, or other instrument during the said three years governing an endowment not having during the said three years been duly carried into effect, or being merely provisional, the preceding provisions of this section are not in the opinion of the Charity Commissioners for England and Wales applicable to such endowment, the Charity Commissioners shall determine what proportions shall be considered as applicable to educational purposes, and such other charitable uses respectively.

Subject to the foregoing provisions of this section, the Commissioners shall have power by any scheme to deal with such endowment, and with the governing body thereof, in the same manner in all respects as if the whole of it were an educational endowment.

(a) See sect. 5, *ante*.

(b) An endowment, the whole of which was applicable "for the purposes of the education at school of boys or girls," no part of it being applicable to any "other charitable use," was held not to be brought within this section because the deed of foundation contained a direction that certain persons might continue at the school after twenty-one: *Re Hodgson's School*, 3 App. Cas. 857.

(c) Where a proposed scheme with reference to an endowment, partly educational, provided that all the sums previously appropriated to charities, other than educational, were to be paid to the old trustees, but did not provide for the payments to them of a sum of 120*l.*, which had been previously received by them for management, it was held that as the property was now vested in the official trustee of charity lands, and the governors under the new scheme were alone to have the management of the property, and were to pay to the old trustees certain specific sums for specific purposes, the old provisions as to management were superseded, and the non-continuance to the old trustees of the 120*l.* for management was authorized: *Ross v. Charity Commissioners*, 7 App. Cas. 463.

(d) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

(e) See sect. 39 of this Act, *post*.

(*f*) 2nd August, 1869.

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(*g*) As to what is the "instrument of foundation," see cases cited in n. (*b*) (*f*), (*g*), (*h*).
to sect. 19, *ante*.

(*h*) In a case coming within this sub-section, a scheme under these Acts cannot, except with the assent of the governing body, appoint new trustees to have the management of the charity estates or alter the mode of dealing with them: *Att.-Gen v. Moises*, stated in App. III. to this Book, *post*.

The Court will not, of course, refuse to exercise jurisdiction, because the same result might have been produced under this Act, but for the fact that the governing body refused to assent: *ibid*.

25. Where an endowment or part of an endowment originally given to charitable uses less than fifty years before the commencement of this Act (*b*) has, by reason of having been spent on school buildings or teachers residences, or playground or gardens attached to such buildings or residences, become so mixed with an old endowment given more than fifty years before the passing of this Act (*b*), that in the opinion of the Commissioners (*c*) (subject to appeal to her Majesty in Council (*d*)) it cannot conveniently be separated from such old endowment, then the whole endowment shall for the purposes of this Act be deemed to be an endowment originally given to charitable uses more than fifty years before the commencement of this Act.

New endowment mixed with old buildings, &c. (*a*).

(*a*) Where the endowment given less than fifty years before the commencement of the Act is in value not less than the old endowment, and was given under the belief that the old endowment was attached to some particular denomination, a scheme must provide for religious instruction being given to scholars belonging to such denomination: End. Schools Act, 1873, s. 8, *post*.

As to apportionment where the new endowment is not so mixed with the old, as in this section mentioned, see the next section.

By sect. 14, sub-sect. (1), of this Act, *ante*, schemes may not be made with regard to an endowment or part of an endowment originally given to charitable uses less than fifty years before the commencement of this Act, except with the assent of the governing body.

(*b*) 2nd August, 1869.

(*c*) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

(*d*) See sect. 31 of this Act, and sect. 14 of the End. Schools Act, 1873, *post*.

26. Where part of an endowment has been originally given to charitable uses more than fifty years, and

Apportionment of old and new endowments (*a*).

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(*a*) See note (*a*) to the last section.

(*b*) 2nd August, 1869.

(*c*) See the last section.

(*d*) See sect. 14 of this Act, *ante*.

(*e*) See sect. 31 of this Act, and sect. 14 of End. Schools Act, 1873, *post*.

Claims of
cathedral
schools
against
Ecclesiastical
Commissioners (*a*).

27. Where an educational endowment at the commencement of this Act forms or has formed part of the endowment of any cathedral or collegiate church, the Commissioners (*b*) shall inquire into the adequacy of such educational endowment, and may submit to the Ecclesiastical Commissioners for England proposals for meeting out of the common fund of the Ecclesiastical Commissioners the claims of any school receiving assistance out of the endowment of any such church to have an increased provision made for it in respect of any estates of such church which may have been transferred to the Ecclesiastical Commissioners. And the Ecclesiastical Commissioners on assenting to any such proposal or any modification of it may make such provision out of their common fund by such means and in such manner

as they think best, and a scheme under this Act (c) may with their consent be made for carrying such proposal into effect. Sect. 27.

(a) See note (c) to sect. 14 of this Act, *ante*.

(b) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

(c) See sect. 9, *ante*.

28. In any scheme the Commissioners (a) may provide for the alteration from time to time of such portions of the scheme as they think expedient by the Charity Commissioners for England and Wales in the exercise of their ordinary jurisdiction, provided such alteration shall not be contrary to anything contained in this Act. As to alteration of schemes.

(a) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

The alteration of a scheme under this section can only be effected by a scheme established in pursuance of the Acts for the time being in force relating to the Charity Commissioners: End. Schools Act, 1873, s. 10, *post*. Schemes under these Acts provide that any alteration in the scheme may be effected by the Charity Commissioners under their ordinary jurisdiction: see clause 66 of Scheme No. V. in App. II. *post*. Alteration under general jurisdiction.

Such schemes may, however, also be altered by a further scheme under the Endowed Schools Acts (sect. 44 of this Act, *post*; and see *Re Sutton Coldfield Grammar School*, 7 App. Cas. at p. 93), and where a substantial alteration in an existing scheme is required, it is the practice to effect it by means of a fresh scheme under these Acts, and not under the ordinary jurisdiction of the commissioners. Alteration under End. Schools Acts.

29. For the purposes of this Act endowments attached to any school for the payment of apprenticeship fees or for the advancement in life or for the maintenance or clothing or otherwise for the benefit of children educated at such school shall be deemed to be educational endowments (a). Apprenticeship fees, &c.

Provided that nothing shall be construed to prevent a scheme relating to any such endowment from providing, if the governing body so desire, for the continued application of such endowment to the same purposes.

(a) See sect. 5 of this Act, *ante*.

30. In the case of any endowment which is not an educational endowment as defined in this Act (b), but the Application to education of non-

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educational
charities (a).

income of which is applicable wholly or partially to any one or more of the following purposes; namely,—

Doles in money or kind;

Marriage portions;

Redemption of prisoners and captives;

Relief of poor prisoners for debt;

Loans;

Apprenticeship fees;

Advancement in life, or

Any purposes which have failed altogether, or have become insignificant, in comparison with the magnitude of the endowment, if originally given to charitable uses in or before the year of our Lord one thousand eight hundred;

it shall be lawful for the Commissioners(c), with the consent of the governing body, to declare, by a scheme under this Act (d), that it is desirable to apply for the advancement of education the whole or any part of such endowment, and thereupon the same shall for the purposes of this Act be deemed to be an educational endowment, and may be dealt with by the same scheme accordingly:

Provided that—

(1.) In any scheme relating to such endowment due regard shall be had to the educational interests of persons of the same class in life or resident within the same particular area as that of the persons who at the commencement of this Act are benefited thereby:

(2.) No open space at the commencement of this Act enjoyed or frequented by the public shall be inclosed in any other manner than it might have been if this Act had not passed.

(a) If there has been no declaration under this section, the mere fact that a scheme is pending before the Charity Commissioners, and that such a declaration may be made, is no reason why the Court should not, on a summons under sect. 28 of the Charit. Trusts Act, 1853, direct inquiries and settle a scheme: *Re Charitable Gifts for Prisoners*, L. R. 8 Ch. 199.

(b) Sect. 5, ante.

- (c) The Charity Commissioners: End. Schools Act, 1874, ss. 1, 10, *post*.
 (d) Sect. 32, *infra*.

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 (c), (d).

Procedure for making Schemes.

31. *For the purposes of this Act it shall be lawful for her Majesty from time to time to appoint Commissioners (in this Act referred to as "the Commissioners"), and to appoint a secretary to such Commissioners, and to remove any Commissioners or secretary so appointed and appoint others, but the number of such commissioners shall not exceed three at any one time.*

Appointment
 of Commis-
 sioners.

The Commissioners of her Majesty's Treasury may assign to the Commissioners and secretary such salaries, and allow them to employ such assistant commissioners, officers, and clerks, as the Commissioners of her Majesty's Treasury may think proper.

The Commissioners, secretary, and other persons so appointed and employed shall not hold office after the expiration of the time limited for the exercise of their powers (a).

(a) Repealed by sect. 7 of the End. Schools Act, 1874, the powers and duties of the Endowed School Commissioners being by sect. 1 of that Act transferred to the Charity Commissioners.

32. *The Commissioners (b), after such examination or public inquiry as they think necessary, may prepare drafts of schemes for the purposes of this Act (c), subject to the following conditions; namely,*

Preparation
 of draft
 scheme (a).

- (1.) Where the gross average annual income of an endowment or of the aggregate educational endowments of an endowed school during the three years next before the first of January one thousand eight hundred and sixty-nine,—

(a) exceeded ten thousand pounds a year, then before the expiration of twelve months, and where it—

(b) exceeded one thousand pounds a year, then before the expiration of six months, after the commencement of this Act, any

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governing body of any such endowment may, if they give to the Commissioners such notice as in this section mentioned, prepare and submit to the Commissioners in writing a scheme relating to such endowment, and the Commissioners shall consider such scheme before they themselves prepare any draft of a scheme relating to the same endowment; and any scheme so prepared by the governing body, and submitted to the Commissioners, shall, if approved by them, be adopted and proceeded with by them in the same manner as if it were a draft scheme originally prepared by themselves :

- (2.) The notice to be given by a governing body to the Commissioners is a notice of their intention to prepare and submit to the Commissioners a draft of a scheme, which notice shall be in writing, and shall be given to the Commissioners within two months after the commencement of this Act :
- (3.) The certificate of the Charity Commissioners for England and Wales shall be conclusive evidence for the purposes of this section of the income of an endowment or aggregate endowments of an endowed school.

Procedure for establishing schemes.

- | | |
|---|--|
| 1. Draft scheme. | (a) The draft scheme prepared under this section is first printed and published : sect. 33. |
| Publication. | During two months after publication objections and suggestions may be made, or an alternative scheme submitted by a governing body : sect. 34 ; |
| Objections, &c. | End. Schools Act, 1873, s. 12. |
| Inquiry. | At any time after the expiration of the two months an inquiry may be held : sect. 35. |
| 2. Scheme submitted to Committee of Council on Education. | After the expiration of such two months, or the conclusion of such inquiry, objections, suggestions, and any alternative scheme submitted are considered. The commissioners then proceed to frame a scheme and submit it for the approval of the Committee of Council on Education : sect. 36. |
| Publication and receipt of objections, &c. | The scheme thus submitted to the Committee of Council is published with a notice that objections and suggestions will be received within one month : End. Schools Act, 1873, s. 13. |
| Approval or remittal to | After that time has expired the committee either approve the scheme or |

remit it with a declaration (*ibid.*), and if they remit it the Charity Commissioners must submit amendments, or may propose an entirely new scheme: sect. 40.

The scheme as finally approved by the Committee of Council on Education is published and circulated: End. Schools Act, 1873, s. 13.

Within two months after such publication a petition of appeal may be presented against it to the Queen in Council (sect. 39; End. Schools Act, 1873, s. 14), or a petition may be presented to the Committee of Council on Education praying that the scheme may be laid before Parliament: End. Schools Act, 1873, s. 13.

If a petition is presented to the Queen in Council the scheme may be ordered to be laid before Parliament, or may be remitted with a declaration: sect. 39 of this Act. In the latter case the procedure is the same as where a scheme is remitted with a declaration by the Committee of Council on Education: sect. 40.

If no petition is presented to the Queen in Council or to the Committee of Council on Education, the Queen may by order in Council declare her approbation of the scheme without its being laid before Parliament: End. Schools Act, 1873, s. 15.

If a petition has been presented to the Committee of Council on Education the scheme must be laid before both Houses of Parliament for two months. At the end of that time, unless an address against it is presented by either house, the Queen may by order in Council declare her approbation thereof: *ibid.*

If the scheme, or any part of it, is not approved by her Majesty, the Charity Commissioners may proceed to prepare another scheme: sect. 43 of this Act.

A scheme when approved by her Majesty has the same effect as though it were enacted in this Act: sects. 45, 46. And the order in Council approving a scheme is conclusive evidence of its validity: sect. 47.

(b) The Charity Commissioners: End. Schools Act, 1874, ss. 1, 10, *post*.

(c) The rest of this section is, of course, now out of date: see *Re Charitable Gifts for Prisoners*, L. R. 8 Ch. 199, cited in n. (a) to sect. 30 of this Act, *ante*.

Sect. 32
(a)—(c).

commis-
sioners.

3. Approved
scheme.
Publication.

Petition to
Queen in
Council or to
Committee of
Council on
Education.

Petition to
Queen in
Council.

Where no
petition,
scheme
approved by
Order in
Council.

Petition to
Committee of
Council on
Education.

Remitted to
Charity Com-
missioners.
Effect of
approval by
her Majesty.

33. When the Commissioners (a) have prepared the draft of a scheme they shall cause it to be printed, and printed copies of it to be sent to the governing body (b) or governing bodies of the endowment or endowments to which it relates, and to the principal teacher of any endowed school to which it relates, and shall also cause the draft, or a proper abstract of it, to be published and circulated in such manner as they think sufficient for giving information to all persons interested.

As to printing
and publica-
tion of draft
schemes.

(a) The Charity Commissioners: End. Schools Act, 1874, ss. 1, 10, *post*.

(b) As to the sending of documents to the governing body, see sect. 56 of this Act, *post*; and as to sending documents in the case of endowments, &c. vested in her Majesty in right of the Crown or Duchy of Lancaster, see End. Schools Act, 1873, s. 4, *post*.

Sect. 34.

Objections
and sugges-
tions respect-
ing scheme
and alterna-
tive scheme.

34. During three (*a*) months after the first publication (*b*) of the draft of a scheme the Commissioners (*c*) shall receive any objections or suggestions made to them in writing respecting such scheme, and shall receive any alternative scheme submitted to them by the governing body of any endowment to which the scheme of the Commissioners relates.

(*a*) Now "two": End. Schools Act, 1873, s. 12, *post*.

(*b*) See the last section.

(*c*) The Charity Commissioners: End. Schools Act, 1874, ss. 1, 10, *post*.

Power to
make inquiry
into schemes.

35. At any time after the expiration of the three (*a*) months the Commissioners (*b*), or any one of them, if they think fit, may hold an inquiry or they may refer the draft of the scheme and the alternative scheme, if any, to an assistant commissioner, and direct him to hold an inquiry (*c*) concerning the subject-matter of such scheme or schemes.

(*a*) Now "two": End. Schools Act, 1873, s. 12, *post*.

(*b*) The Charity Commissioners: End. Schools Act, 1874, ss. 1, 10, *post*.

(*c*) See sects. 50 and 51 of this Act, *post*.

As to framing
of schemes.

36. As soon as may be after the expiration of the said three (*a*) months, or the holding of such inquiry by the Commissioners (*b*) or one of them, or the receipt by the Commissioners (*b*) of the report of the assistant commissioner, on the inquiry held by him (as the case may be) (*c*), the Commissioners shall proceed to consider any objections or suggestions made to them in writing respecting the draft scheme, and to consider the alternative scheme (if any) (*d*), and the report (if any), and thereupon they shall, if they think fit, frame a scheme in such form as they think expedient, and submit it for the approval of the Committee of Council on Education (*e*): Provided that where a scheme has been prepared and submitted in pursuance of this Act to the Commissioners before the Commissioners have prepared the draft of a scheme, the Commissioners shall, if requested by the

governing body which submitted it, submit such scheme with their own to the Committee of Council on Education (*f*). Sect. 36.

(a) Now "two": End. Schools Act, 1873, s. 12, *post*.

(b) The Charity Commissioners: End. Schools Act, 1874, ss. 1, 10, *post*.

(c) See the last section.

(d) See sect. 34 of this Act, *ante*.

(e) The Lords of the Committee of her Majesty's Privy Council on Education: sect. 7 of this Act, *ante*.

A scheme of the Charity Commissioners may not be submitted to the Committee of Council on Education unless it has been approved at a meeting of the Board at which three commissioners (including the Chief Commissioner, unless unavoidably absent) are present: End. Schools Act, 1874, s. 5, *post*.

(f) See sect. 32 of this Act, *ante*.

37. *The Committee of Council on Education shall consider all schemes so submitted to them, and may, if they think fit, approve any scheme so submitted, and shall cause the scheme so approved to be published and circulated in such manner as they think sufficient for giving information to all persons interested (a).* Approval of
Committee of
Council on
Education to
schemes.

If the Committee do not approve a scheme submitted to them the Commissioners (*b*) may frame and submit another scheme in the same manner as if no scheme had been previously framed and submitted; provided that where the Committee of Council on Education have not approved any scheme relating to an endowment, the governing body of which may under this Act (*c*) prepare and submit a draft of a scheme before the Commissioners (*b*) prepare a draft of a scheme, such governing body may, within three months after notice of such non-approval (if within one month thereafter they give written notice of their intention to the Commissioners), submit to the Commissioners an amended scheme; and the Commissioners shall consider the same before they frame and submit another scheme relating to the same endowment, and such amended scheme of the governing body, if approved by the Commissioners, shall be adopted and proceeded with

Sect. 37. by them as if it were a scheme originally framed by themselves.

(a) This paragraph is repealed by sect. 20 of the End. Schools Act, 1873, *post*. The substituted provisions are contained in sect. 13 of the same Act, *post*.

(b) The Charity Commissioners: End. Schools Act, 1874, ss. 1, 10, *post*.

By sect. 13 of the End. Schools Act, 1873, *post*, the committee may either approve the scheme or remit it with a declaration; and in case of its being remitted the procedure to be followed is that prescribed by sect. 40 of this Act.

(c) Sect. 32, *ante*.

Consent of college or hall (a).

38. Where a scheme abolishes any restriction which makes any exhibition (b) tenable only at a particular college or hall in any university, and the exhibition is payable out of property held by such college, or by the university in trust for such college or hall, (otherwise than as governing body of a school, or as a bare trustee,) the scheme shall not be approved if not less than two thirds of the governing body of such college or hall dissent therefrom in writing; but in every such case the Committee of Council shall make a special report to Parliament setting out the proposed scheme, and stating the dissent, and the reasons, if any, assigned for it.

(a) As to how far this Act applies to exhibitions at Oxford and Cambridge colleges, see sect. 14, sub-sect. (4), *ante*, and note (f) thereto. See also the definition of "educational endowment" in sect. 5 of this Act, *ante*.

(b) Defined by sect. 7 of this Act, *ante*.

Appeal to Queen in Council (a).

39. If the governing body of any endowment to which a scheme relates, or any person or body corporate directly affected (b) by such scheme, feels aggrieved by the scheme, on the ground—

(1.) Of any decision of the Commissioners (c) in a matter in which an appeal to her Majesty in Council is given by this Act (d); or

(2.) Of the scheme not saving or making due compensation for his or their vested interest as required by this Act (e);

(3.) Of the scheme being one which is not within the scope of or made in conformity with this Act (*f*); or Sect. 39.

(4.) (If the governing body are the petitioners,) of a scheme not having due regard to any educational interests, to which regard is required by this Act to be had, on the abolition or modification of any privileges or educational advantages to which a particular class of persons are entitled (*g*);

such governing body, person, or body corporate may within two months after the publication of the scheme when approved (*h*) petition her Majesty in Council stating the grounds of the petition, and praying her Majesty to withhold her approval from the whole or any part of the scheme.

Her Majesty, by order in Council, may refer any such petition for the consideration and advice of five members at the least of her Privy Council, of whom two (not including the Lord President) shall be members of the Judicial Committee, and such five members may, if they think fit, admit counsel to be heard in support of and against the petition, and shall have the same power with respect to the costs of all parties to the petition as the Court of Chancery would have if the petition were a proceeding in that Court by way either of petition or information for obtaining a scheme (i).

Any petition not proceeded with in accordance with the regulations made with respect to petitions presented to the Judicial Committee of the Privy Council shall be deemed to be withdrawn.

It shall be lawful for her Majesty by order in Council to direct that the scheme petitioned against be laid before Parliament (*j*), or to remit it (*k*) to the Commissioners (*c*) with such declaration as the nature of the case may require.

(a) This section states four grounds upon any of which a petition of appeal may be presented. Who may appeal.

An appeal on any of the first three grounds may be by the governing

Sect. 39
(a)–(e).

body of the endowment, or any person or body corporate directly affected by the scheme: *Re Shaftoe's Charity*, 3 App. Cas. at p. 876.

An appeal on the fourth ground can only be by the governing body: *ibid.*

Petition must
state grounds
of appeal.

In every case the appellant must state in his petition the grounds upon which he appeals, that is, it must be shown on the face of the petition that the appeal is brought on one of the grounds expressly recognised by the clause, and that the appellant (if not the governing body) is "directly affected" by that of which he complains: see per Lord Selborne in *Re Shaftoe's Charity*, 3 App. Cas. at p. 876.

"Directly
affected."

There have been some decisions as to what is meant by "directly affected." In *Re Shaftoe's Charity*, *supra*, a petition was presented by certain inhabitants and ratepayers of a particular chapelry on the ground that they in common with the other inhabitants of the chapelry had a right to have their children taught free of expense in the school, and that that right was infringed by the scheme, but no individual complained that he had a child at the school whose status was interfered with. It was held that the petitioners were not directly affected by the scheme, and that the appeal could not be maintained. Lord Selborne said (at p. 877): "These petitioners in the strict and natural sense of the words are not 'directly' interested; they have no present personal interests in this matter which are taken away; they have merely, as members of the class constituted by the inhabitants of a particular area, a general privilege or educational advantage; that is, the opportunity, if from time to time they or their children should require it, of sending their children for education, free of charge, to this school. But the loss of such opportunities, so far as they are interfered with by the scheme, affects not directly and immediately, but indirectly and contingently, each of these individuals." See also *Re Sutton Coldfield Grammar School*, 7 App. Cas. 91, and *Re Free Grammar School, &c. at Hemsworth*, 12 App. Cas. 444. In the latter case a petition was presented by parents of children attending the school, on the ground that a proposed scheme did not make due compensation for their vested interest, and the vested interest of their sons, and it was held that as the Act did not (sect. 13, *ante*) direct that any interest of a boy on the foundation of a school should be saved or compensated, unless he was there at the time of the passing of the Act (2nd August, 1869), they had no *locus standi*.

Matters in
discretion of
commis-
sioners.

If the matter complained of is within the discretion of the commissioners, their decision will not be interfered with on appeal, unless the Court is plainly of opinion that the provisions of the Act have not been observed: *Ross v. Charity Commissioners*, 7 App. Cas. at p. 468; *Re St. Leonard, Shoreditch, Parochial Schools*, 10 App. Cas. 304. Cf. the case of appeals under the Charit. Trusts Acts, *ante*, p. 101.

Endowments
having in-
comes less
than 100*l.*

By sect. 42 of this Act, *post*, appeals may not be presented in the case of endowments which had not during the three years preceding this Act an average annual income of 100*l.*

(b) See cases cited in note (a), *supra*.

(c) The Charity Commissioners: End. Schools Act, 1869, ss. 1 and 10, *post*.

(d) See sects. 19, 24, 25, and 26, *ante*; and End. Schools Act, 1873, s. 8, *post*.

(e) See sect. 13 of this Act, *ante*, and notes thereto.

(f) The removal of the site of a school is within the scope of the Act: *Re Free Grammar School, &c. at Hensworth*, 12 App. Cas. 444.

Sect. 39
(f)—(k).

A scheme expressed to be without prejudice to a future scheme, to be framed in accordance with the End. Schools Acts, was held not wanting in the finality required by the Act, for as the Acts enabled the commissioners from time to time to make new schemes, the words to that effect in the scheme were surplusage: *Re Sutton Coldfield Grammar School*, 7 App. Cas. 91.

Removal of site.
Scheme without prejudice to future scheme.

(g) See sect. 11 of this Act, *ante*, and notes (c) and (d) thereto.

(h) See End. Schools Act, 1873, s. 13, *post*.

(i) The paragraph in italics was repealed by sect. 20 of the End. Schools Act, 1873, *post*. By sect. 14 of the same Act, *post*, every petition under this section is to be referred to the Judicial Committee of the Privy Council, as if it were an appeal from a Court from which an appeal lies to her Majesty in Council, and the petition and the costs of it are to be heard and dealt with in like manner as in such appeals, and the report to her Majesty is to be stated in open Court, as in the case of any such appeal. See also per Lord Selborne in *Re Alleyn's College, Dulwich*, 1 App. Cas. at p. 75.

(j) See sect. 15 of the End. Schools Act, 1873, *post*.

(k) As to the proceedings where a scheme is remitted, see the next section.

40. Where a scheme is remitted with a declaration the Commissioners (b) may either proceed to prepare another scheme in the matter in the same manner as if no scheme had been previously prepared, or may submit for the approval of the Committee of Council on Education such amendments in the scheme as will bring it into conformity with the declaration.

Proceedings where scheme is remitted (a).

The Committee may, if they think fit, approve the scheme with such amendments, and shall publish and circulate the same in the same manner and subject to the same right of petition to her Majesty in Council as is before directed in the case of the approval of a scheme (c), and so on from time to time as often as occasion may require.

(a) This section applies where a scheme is remitted under the last section, and also where it is remitted by the Committee of Council on Education under sect. 13 of the End. Schools Act, 1873, *post*.

(b) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

(c) Sect. 37, *ante*; but see now sect. 13 of the End. Schools Act, 1873, *post*.

41. After the time has expired for a petition to her Majesty in Council against any scheme, or after her Majesty in Council has directed a scheme to be laid before Parliament, the scheme

Schemes, &c. to be laid before Parliament.

Sect. 41.

shall be forthwith laid before both Houses of Parliament, if Parliament be sitting, or if not, then within three weeks after the beginning of the next ensuing session of Parliament, and after such scheme has lain for forty days before Parliament, then unless within such forty days an address has been presented by one or other of the said Houses praying her Majesty to withhold her consent from such scheme or any part thereof, it shall be lawful for her Majesty by Order in Council to declare her approbation of such scheme or any part thereof to which such address does not relate (a).

(a) This section is repealed by sect. 20 of the End. Schools Act, 1873 (except as regards schemes which had lain for forty days before Parliament before the commencement of that Act), sect. 15 of that Act being substituted for it.

Exception as to schemes for endowments under 100l.

42. Where a scheme relates to an endowment which during the three years preceding the commencement of this Act (a) has had an average annual gross income of not more than one hundred pounds, no petition shall be presented to her Majesty in Council with reference to such scheme (b), so far as it relates to such an endowment.

The certificate of the Charity Commissioners for England and Wales shall be conclusive evidence for the purposes of this section of the income of an endowment.

(a) 2nd August, 1869.

(b) See sect. 39 of this Act, *ante*.

New scheme on non-approval (a).

43. If any scheme or any part thereof is not approved by her Majesty, then the Commissioners (b) may thereupon proceed to prepare another scheme in the matter, and so on from time to time as often as occasion may require.

(a) See note (a) to sect. 32 of this Act, *ante*.

(b) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

Amendment of schemes (a).

44. Schemes may be from time to time framed and approved for amending any scheme approved under this

Act, and all the provisions of this Act relative to an original scheme (b) shall apply also to an amending scheme, *mutatis mutandis*. Sect. 44.

(a) See also sect. 28 of this Act, *ante*; and sect. 10 of the End. Schools Act, 1873, *post*.

(b) See note (a) to sect. 32 of this Act, *ante*.

45. A scheme shall not of itself have any operation, but the same, when and as approved by her Majesty in Council (a), shall, from the date specified in the scheme, or, if no date is specified, from the date of the Order in Council, have full operation and effect in the same manner as if it had been enacted in this Act. Scheme to take effect.

(a) See sect. 15 of the End. Schools Act, 1873, *post*.

46. Upon a scheme coming into operation, every Act of Parliament, letters patent, statute, deed, instrument, trust, or direction relating to the subject-matter of the scheme, and expressed by such scheme to be repealed and abrogated, shall, by virtue of the scheme and of this Act, be repealed and abrogated from the date in that behalf specified, or, if no date is specified, from the date of the scheme coming into operation, and all property purporting to be transferred by such scheme shall, without any other conveyance or act in the law (so far as may be), vest in the transferees, and so far as it cannot be so vested shall be held in trust for the transferees. Effect of scheme.

47. The Order in Council approving a scheme (a) shall be conclusive evidence that such scheme was within the scope of and made in conformity with this Act, and the validity of such scheme and order shall not be questioned in any legal proceedings whatever. Evidence of scheme.

(a) See sect. 15 of the End. Schools Act, 1873, *post*.

48. A scheme of the Commissioners shall not be submitted to the Committee of Council on Education unless two at least Quorum of Commissioners.

Sect. 48. *of the Commissioners have signified in writing their approval of such scheme, but in all other respects one commissioner may act under this Act (a).*

(a) Repealed by sect. 7 of the End. Schools Act, 1874; sect. 5 of that Act being substituted for it.

Power of Commissioners, &c. as to procuring evidence. 16 & 17 Vict. c. 137. 18 & 19 Vict. c. 124, ss. 6—9.

49. Section eleven of the Charitable Trusts Act, 1853 (a), (which relates to the production of documents by public officers,) and sections six, seven, eight and nine of "The Charitable Trust Act, 1855," (relating to evidence, and the attendance and examination of witnesses,) shall extend to the Commissioners (b) and assistant commissioners under this Act, as if they were the Commissioners and inspectors mentioned in those sections.

(a) See *Re Meyricke Fund*, L. R. 13 Eq. 269; 7 Ch. 500.

(b) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

Inquiry by public sittings by Commissioners, &c.

50. Where any Commissioner or assistant commissioner holds a local inquiry (a) for the purpose of a scheme under this Act, whether before or after the first publication of a draft scheme, he shall for that purpose hold a sitting or sittings in some convenient place in the neighbourhood of the place where the endowment is situate or administered, and thereat take and receive any evidence and information offered, and hear and inquire into any objections or suggestions made or to be made during the sitting or sittings respecting the scheme or the endowment or school, with power from time to time to adjourn any sitting.

Notice shall be published, in such manner as the Commissioners (b) direct, of every such sitting (except an adjourned sitting), fourteen days at least before the holding thereof.

(a) See sect. 35 of this Act, *ante*, and next section.

(b) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

51. The assistant commissioner who holds a local inquiry (a) shall make a report in writing to the Commissioners (b) setting forth the result of the inquiry, and where a draft scheme, with or without an alternative scheme, has been referred to him whether in his opinion such draft or alternative scheme, as the case may be, should be approved with or without alteration, and if with any, then with what alteration, and his reasons for the same, and the objections and suggestions, if any, made on the inquiry, and his opinion thereon.

Sect. 51.

As to report of assistant commissioners.

(a) See sects. 35 and 50 of this Act.

(b) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

Miscellaneous.

52. *During the continuance of the power of making schemes under this Act the Charity Commissioners for England and Wales, or any Court or judge, shall not, with respect to any educational endowment which can be dealt with by a scheme under this Act, make any scheme or appoint any new trustees without the consent of the Committee of Council on Education (a).*

Restriction of powers of Charity Commissioners, Court, &c.

During the same period the Charity Commissioners shall have the same power of acting upon application made to them by the Commissioners under this Act (b) with respect to any educational endowment as they would have if such application had been made by the governing body of such endowment; and the governing body shall conform to any order made or directions given by the Charity Commissioners upon such application.

(a) The paragraph in italics was repealed by sect. 7 of the End. Schools Act, 1874, sect. 6 of that Act being substituted for it. As to the continuance of these powers, see note (c) to the last-mentioned section, *post*. 657.

(b) The Charity Commissioners may now exercise these powers of their own motion: see sect. 4 of the End. Schools Act, 1874, *post*.

53. The chapel of an endowed school subject to this Act, which either has been before or after the com-

School chapels appropriated

Sect. 53. for religious worship free from parochial jurisdiction. mencement of this Act consecrated according to law, or is authorized for the time being by the bishop of the diocese in which the chapel is situate, by writing under his hand, to be used as a chapel for such school, shall be deemed to be allowed by law for the performance of public worship and the administration of the sacraments according to the liturgy of the Church of England, and shall be free from the jurisdiction and control of the incumbent of the parish in which such chapel is situate.

Quorum of governing body for acting under this Act. **54.** The majority of the members of a governing body who are present at a meeting of their body duly constituted shall have power to do anything that may be required to be done by a governing body for the purposes of this Act: Provided that this power shall be in addition to and not in restraint of any power which any meeting of such governing body may have independently of this Act.

Persons acquiring interest after passing of Act to be subject to scheme. **55.** Every interest, right, privilege, or preference, or increased interest, right, privilege, or preference, which any person may acquire after the passing of this Act (*a*) in or relative to any endowed school (*b*) or educational endowment (*c*), or in the governing body (*d*) thereof, or as member of any such governing body, or in or relative to any mastership, office, place, employment, pension, compensation, allowance, exhibition, or emolument in the gift of any such governing body, shall be subject to the provisions of any scheme made under this Act; and the governing body of an endowed school or educational endowment shall not, during the continuance of the power of making schemes under this Act, begin to build, rebuild, or enlarge any school buildings or teachers residences or buildings connected therewith, except with the written consent of the Commissioners (*e*), or under the directions of such a scheme, but this provision shall not prevent them from continuing any works begun before the passing of this Act, or from doing anything

necessary for the repair or maintenance of buildings or residences existing at the passing of this Act. Sect. 55.

(a) 2nd August, 1869. By the End. Schools Act, 1868 (31 & 32 Vict. c. 32), it was provided, that persons appointed after the passing of that Act were to take office subject to future legislation. See *ante*, p. 456.

The effect of the End. Schools Act, 1868, and of this section, and of the schemes established under the End. Schools Acts, has been to render the old law, as to the appointment and dismissal of schoolmasters (see *ante*, pp. 218 *et seq.*), to a great extent obsolete. Effect on old law as to appointment and dismissal of masters.

(b) Defined by sect. 6 of this Act, *ante*.

(c) Defined by sect. 5 of this Act, *ante*.

(d) Defined by sect. 7 of this Act, *ante*.

(e) The Charity Commissioners: End. Schools Act, 1874, ss. 1, 10, *post*.

56. Notices and documents required to be served on or sent to a governing body (a) for the purposes of this Act may be served or sent by being left at the office, if any, of such governing body, or being served on or sent to the chairman, secretary, clerk, or other officer of such governing body, or if there is no office, chairman, secretary, clerk, or officer, or none known to the Commissioners (b) (after reasonable inquiry), by being served on or sent to the principal teacher of the school (if any) under such governing body. Service of notices.

(a) See sects. 15 and 33 of this Act. And with regard to endowments vested in her Majesty in right of the Crown or Duchy of Lancaster, see sect. 4 of the End. Schools Act, 1873, *post*.

(b) The Charity Commissioners: End. Schools Act, 1874, ss. 1, 10, *post*.

57. Notices and documents required to be served or sent for the purposes of this Act may be served or sent by post, and shall be deemed to have been served and received at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notices or documents was properly addressed and put into the post office. Service by post.

58. The salaries paid and expenses incurred in carrying into effect this Act shall be defrayed out of monies to be provided by Parliament. Expenses of Act.

Sect. 59. *59. The powers of making and approving of a scheme under this Act shall not, unless continued by Parliament, be exercised after the thirty-first of December one thousand eight hundred and seventy-two, or such further day not later than the thirty-first of December one thousand eight hundred and seventy-three, as may be appointed by her Majesty in Council (a).*

Duration of
powers of
making
schemes.

(a) Repealed by the End. Schools Act, 1874, s. 7, *post*. See sect. 17 of the End. Schools Act, 1873 (now repealed), and sect. 6 of the End. Schools Act, 1874, and note (c) thereto, *post*.

THE ENDOWED SCHOOLS ACT, 1873.

36 & 37 VICT. c. 87.

An Act to continue and amend the Endowed Schools Act, 1869. [5th August, 1873.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act shall be construed as one with the Endowed Schools Act, 1869 (in this Act referred to as the principal Act), and the principal Act and this Act may be cited together as the Endowed Schools Acts, 1869 and 1873 (*a*), and this Act may be cited as the Endowed Schools Act, 1873.

Construction of Act and short title.
32 & 33 Vict. c. 56.

(*a*) These Acts and the End. Schools Act, 1874, may be cited together as the End. Schools Acts, 1869, 1873, and 1874, and the three Acts are construed together: End. Schools Act, 1874, s. 10, *post*.

2. This Act shall come into operation on the first day of September one thousand eight hundred and seventy-three, which day is in this Act referred to as the commencement of this Act.

Commencement of Act.

3. Where an endowed school (*b*), not being a grammar school as defined by the Act of the session of the third and fourth years of the reign of her present Majesty, chapter seventy-seven (*c*), or a department of such a

Exception of elementary schools from 32 & 33 Vict. c. 56, and application thereto of

Sect. 3. grammar school, is at the commencement of this Act an elementary school within the meaning of the Elementary Education Act, 1870 (*d*), and the gross average annual income of the aggregate educational endowments of such school during the three years next before such commencement did not exceed one hundred pounds, in such case after the commencement of this Act nothing in the principal Act shall apply to such school or the endowments thereof, and section seventy-five of the Elementary Education Act, 1870 (*f*), shall apply to such school and the endowments thereof in like manner as if it were a school which, at the commencement of the principal Act (*g*), was in receipt of an annual parliamentary grant, and schemes may accordingly be framed, submitted, and approved under the said section with reference to such school and endowments.

33 & 34 Vict.
c. 75, s. 75 (*a*).

Provided, that nothing in this section shall prevent the Commissioners (*h*) from making, on the application of the governing body of an endowment of which part only is an educational endowment to which this section applies, a scheme dealing, in pursuance of the principal Act, with the part of such endowment applicable or applied to other charitable uses (*i*), and in such case the scheme may deal with the endowed school and endowment thereof in like manner as if this section had not been enacted.

The governing body of every school to which this section applies may, if they think fit, charge such fees to the scholars as may from time to time be approved by the Committee of Council on Education, and shall permit the school to be inspected and the scholars therein to be examined by one of her Majesty's Inspectors of Schools at such times and in such manner as the Committee of Council on Education may from time to time direct.

The certificate of the Charity Commissioners for England and Wales that a school is or is not a school to which this section applies shall be conclusive evidence of

the fact for the purposes of the principal Act and this Sect. 3.
section.

(a) For other exceptions from the End. Schools Acts, see sect. 8 of the End. Schools Act, 1869, *ante*.

(b) Defined by sect. 6 of the End. Schools Act, 1869, *ante*.

(c) See sects. 24 and 25. The Grammar Schools Act is printed in App. I. to this Book, *post*.

(d) 33 & 34 Vict. c. 75, s. 3, where an elementary school is defined as follows:—"The term 'elementary school' means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction from each scholar exceed ninepence a week."

(f) This section will be found in note (d) to sect. 8 of the End. Schools Act, 1869, *ante*, p. 602.

(g) 2nd August, 1869.

(h) Charity Commissioners: End. Schools Act, 1874, ss. 1, 10, *post*.

(i) See sect. 24 of End. Schools Act, 1869, *ante*.

4. Where any endowment (a), or any right of holding or any power of government of or management over any endowment, or any power of appointing officers, teachers, exhibitioners (b), or others, either in any endowed school (c) or with emoluments out of any endowment, is vested in her Majesty in right of her Crown or of the Duchy of Lancaster, the Endowed Schools Acts, 1869 and 1873, shall extend to such endowment, right, or powers; and the term "governing body" (d) in those Acts shall be deemed to include her Majesty:

*Extension of
Endowed
Schools Acts to
endowments,
&c. vested in
her Majesty
in right of
the Crown
or Duchy of
Lancaster.*

Provided that—

- (1.) Any scheme with respect to such endowment, right, or power shall not be approved by the Committee of Council on Education (d) unless her Majesty assent to such scheme:
- (2.) All notices and documents required to be served on or sent to a governing body (e) for the purposes of the Endowed Schools Acts, 1869 and 1873, may be served on or sent to the Lord Chancellor or the Chancellor of the Duchy of Lancaster, as the case may require:
- (3.) With the consent of her Majesty, a scheme may

Sect. 4.

deal with any such right or power without saving or making due compensation therefor:

- (4.) Any assent or consent of her Majesty required for the purpose of the Endowed Schools Acts, 1869 and 1873, may be signified by her Majesty's sign manual, countersigned by the Lord Chancellor or by the Chancellor of the Duchy of Lancaster, as the case may require.

(a) Defined by the End. Schools Act, 1869, s. 4, *ante*.

(b) Defined, *ibid.*, s. 7, *ante*.

(c) Defined, *ibid.*, s. 6, *ante*.

(d) See sect. 13 of this Act, *post*.

(e) Sects. 15 and 33 of the End. Schools Act, 1869, *ante*.

Such notices and documents may be sent by post: End. Schools Act, 1869, s. 57, *ante*.

Amendment
of 32 & 33
Vict. c. 56,
s. 11.

5. It shall be the duty of the Commissioners (a) in every scheme to have the same regard to the educational interests of persons in a particular class in life as they are by section eleven (b) of the principal Act required to have to the educational interests of any particular class of persons.

(a) Now the Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

(b) *Ante*, p. 604; and see notes (c) and (d) to that section.

Amendment
of 32 & 33
Vict. c. 56,
s. 17, as to
holders of
office being
retained on
governing
body.

6. Where under the express terms of the original instrument of foundation of any endowed school or educational endowment the holder of any particular office is a member of the governing body of the school or endowment, nothing in section seventeen (a) of the principal Act shall be deemed to prevent the holder for the time being of such office from being retained as a member of the governing body of such school or endowment.

(a) *Ante*, p. 611.

Extension of
32 & 33 Vict.
c. 56, s. 19,
as to schools
excepted
from the pro-
visions as to
religion (a).

7. A scheme relating to any educational endowment (b) originally given to charitable uses since the passing (c) of the Act of the first year of the reign of William and Mary, chapter eighteen (commonly called the Toleration Act), if by the express terms of the original instrument

of foundation, or of the statutes or regulations made by the founder, or under his authority in his lifetime, or within fifty years after his death (which terms have been observed down to the commencement of the principal Act), it is required that the majority of the members of the governing body or that the majority of the persons electing the governing body of such endowment, or that the principal teacher employed in the school, or that the scholars educated by the endowment, shall be members of a particular church, sect, or denomination, shall be excepted from the provisions of the principal Act mentioned in section nineteen (*d*) of the principal Act in like manner as a scheme mentioned in that section, and that section shall be construed as if a scheme relating to such an educational endowment as is above in this section mentioned were a scheme relating to an educational endowment mentioned in sub-section two of the said section.

Sect. 7.

(a) See End. Schools Act, 1869, s. 19, *ante*, and cases cited in note (b) thereto.

(b) Defined by End. Schools Act, 1869, s. 5, *ante*.

(c) 1889.

(d) *Ante*, p. 612.

8. Whereas by section twenty-five (*a*) of the principal Act it is enacted as follows: "Where an endowment or part of an endowment originally given to charitable uses less than fifty years before the commencement of this Act has, by reason of having been spent on school buildings or teachers residences, or playground or gardens attached to such buildings or residences, become so mixed with an old endowment given more than fifty years before the passing of this Act, that in the opinion of the Commissioners (subject to appeal to her Majesty in Council) it cannot conveniently be separated from such old endowment, then the whole endowment shall for the purposes of this Act be deemed to be an endowment originally given to charitable uses more than fifty years before the commencement of this Act," and it is expe-

Amendment
of 32 & 33
Vict. c. 56,
s. 25, as to
new endow-
ment mixed
with old
buildings.

Sect. 8. dient to amend the said section : be it therefore enacted, that—

Where it appears to the Commissioners (*b*) (subject to appeal to her Majesty in Council) (*c*) that the endowment originally given less than fifty years before the commencement (*d*) of the principal Act is in value not less than the old endowment and was given under the belief that the old endowment was attached to some particular church, sect, or denomination, a scheme relating to such endowment shall provide for the giving of religious instruction to the scholars belonging to such church, sect, or denomination.

(*a*) *Ante*, p. 619 ; and see notes thereto.

(*b*) The Charity Commissioners : End. Schools Act, 1874, ss. 1 and 10, *post*.

(*c*) See End. Schools Act, 1869, s. 39, *ante*, and sect. 14 of this Act, *post*.

(*d*) 2nd August, 1869.

Scheme as to endowments in which schools under 31 & 32 Vict. c. 118, are interested.

9. *Where two or more schools are jointly interested in an educational endowment, and one of such schools is a school mentioned in section three of " The Public Schools Act, 1868," the Commissioners shall not, without the consent of the Special Commissioners for the time being under " The Public Schools Act, 1868," deal by any scheme with the interest of such last-mentioned school in the endowment, but, with the consent of those Commissioners to the dealing with such interest, may, by a scheme under the principal Act, deal with such interest as well as with all other interests in such endowment (a).*

(*a*) Repealed by the Stat. Law Rev. Act, 1883, the powers of the Special Commissioners under the Public Schools Act, 1868, having expired.

Explanation of 32 & 33 Vict. c. 56, s. 28, as to alteration of schemes.

10. A provision inserted in pursuance of section twenty-eight (*a*) of the principal Act in any scheme, whether made before or after the passing of this Act, shall not be deemed to give the Charity Commissioners for England and Wales any power to alter any portions of such scheme except by a scheme established in pursuance of the Acts for the time being in force relating to such

Charity Commissioners, or any of those Acts, and upon the same application, and after the same procedure and notices, and subject to the same right of appeal as a scheme established under those Acts by the Charity Commissioners in the exercise of their ordinary jurisdiction (*b*).

Sect. 10.

(*a*) *Ante*, p. 621.

(*b*) For the powers of the Charity Commissioners as to making schemes, see sects. 2—10 of the Charit. Trusts Act, 1860, *ante*.

11. Where a scheme under the principal Act gives the governing body of any endowed school power to make regulations respecting the religious instruction given at such school, the scheme shall also provide for any alteration in such regulations not taking effect until the expiration of not less than one year after notice of the making of the alteration is given (*a*).

Alteration
of religious
instruction.

(*a*) For other provisions with regard to religious instruction, see sects. 15—19 of the End. Schools Act, 1869, and sects. 7 and 8 of the present Act, *ante*.

12. Whereas by section thirty-four (*a*) of the principal Act it is provided as follows: "During three months after the first publication of the draft of a scheme the Commissioners shall receive any objections or suggestions made to them in writing respecting such scheme, and shall receive any alternative scheme submitted to them by the governing body of any endowment to which the scheme of the Commissioners relates;" and it is expedient to reduce the said period of three months to two months:

Amendment
of 32 & 33
Vict. c. 56,
ss. 34 to 36,
as to time
for objections
to schemes.

Be it therefore enacted, that—

"Two months" shall be substituted for "three months" in the said section, and all references in the principal Act (*b*) to the said three months shall be construed to refer to the said two months.

(*a*) *Ante*, p. 626.

(*b*) Sects. 35 and 36, *ante*, p. 626.

Sect. 13.
 Amendment
 of 32 & 33
 Vict. c. 56,
 s. 37, as to
 approval of
 Committee of
 Council on
 Education on
 schemes (a).

13. The Committee of Council on Education as soon as a scheme is submitted to them (b), shall, before approving the same, cause the scheme to be published and circulated in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that during one month after the first publication of such notice the Committee of Council on Education will receive any objections or suggestions made to them in writing respecting such scheme.

After the expiration of the said month the Committee of Council on Education may, if they think fit, approve (c) the scheme or may remit the scheme, with such declaration as the nature of the case seems to them to require, to the Commissioners (d); and section forty (e) of the principal Act, as to the proceedings where a scheme is remitted with a declaration, shall in such case apply.

The Committee of Council on Education as soon as they approve a scheme shall forthwith cause the scheme so approved to be published and circulated in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that unless within two months after the publication of the scheme when approved a petition is presented in pursuance of the principal Act (f) to her Majesty in Council against the scheme, or such petition as in this section mentioned is presented to the Committee of Council on Education, such scheme may be approved by her Majesty without being laid before Parliament (g).

During the said two months a petition praying that the scheme may be laid before Parliament may be presented (h) to the Committee of Council on Education by the governing body of the endowment to which the scheme relates, or by the council of any municipal borough directly affected by the scheme, or by any inhabitant ratepayers (not less than twenty) of any municipal borough or place directly affected by the scheme.

(a) With regard generally to the procedure for the making of schemes, see note (a) to sect. 32 of the End. Schools Act, 1869, *ante*, pp. 624, 625.

- (b) See sects. 36 and 40 of the End. Schools Act, 1869, *ante*.
- (c) A scheme with respect to any endowment, &c., vested in her Majesty in right of the Crown or Duchy of Lancaster cannot be approved unless her Majesty assent thereto: s. 4 of this Act, *ante*.
- (d) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.
- (e) *Ante*, p. 631.
- (f) End. Schools Act, 1869, s. 39, *ante*.
- (g) See sect. 15 of this Act, *post*.
- (h) If such a petition is presented, the scheme must be laid before Parliament: s. 15 of this Act, *post*. It may be doubted whether it is obligatory on the Committee of Council on Education to lay the scheme before Parliament, if no such petition has been presented. But, as a matter of practice, they invariably lay all their schemes before Parliament.

Sect. 13
(b)—(h).

14. Whereas by section thirty-nine(a) of the principal Act it is provided that her Majesty may by Order in Council refer any petition to her Majesty in Council for the consideration and advice of five members at the least of her Privy Council, of whom two, not including the Lord President, shall be members of the Judicial Committee, and it is expedient to provide that such petition should be heard by persons of legal experience: Be it therefore enacted, that—

Amendment
of 32 & 33
Vict. c. 56,
s. 39, as to
appeal to
Queen in
Council.

Every such petition to her Majesty in Council in pursuance of section thirty-nine of the principal Act shall be referred to the Judicial Committee of her Majesty's Privy Council in like manner as if it were an appeal from a Court from which an appeal lies to her Majesty in Council, and the Judicial Committee shall hear and deal with such petitions in like manner as such appeals, and shall have the same power with respect to the costs of parties to the petition and otherwise as they have with respect to any such appeal, and shall make to her Majesty a report or recommendation thereon (the nature of which shall be stated in open Court) in like manner as in the case of any such appeal.

Any power by the Supreme Court of Judicature Act, 1873, conferred on her Majesty of directing that appeals which ought to be heard by the Judicial Committee shall be heard by the appellate branch of such Court shall, if her Majesty in Council thinks fit so to direct, apply to petitions presented in pursuance of the said section thirty-nine in like manner as if

Sect. 14. *they were appeals, and if either an Order in Council relating to other appeals or any separate Order in Council direct that such petitions be referred for hearing to and be heard by the appellate branch of the said Court, the same shall be referred to and heard by that branch of the Court accordingly (b).*

(a) *Ante*, p. 628, and see note (a) thereto.

(b) The paragraph in italics was repealed by the Stat. Law Rev. Act, 1883. The section of the Judicature Act, 1873, referred to, was sect. 21, which was repealed by sect. 24 of the Appellate Jurisdiction Act, 1876.

Laying of schemes before Parliament, and approval of her Majesty in Council (a).

15. If, at the expiration of the time for a petition to her Majesty in Council against any scheme (b), no such petition has been presented, and no petition praying that the scheme be laid before Parliament has been presented in pursuance of this Act (c) to the Committee of Council on Education, it shall be lawful for her Majesty by Order in Council to declare her approbation of such scheme without the same being laid before Parliament (d).

If any such petition has been presented, the scheme shall be laid before both Houses of Parliament, and shall be so laid forthwith, if Parliament is then sitting, after the expiration of the time for the presentation of a petition to her Majesty in Council (b), or (if a petition is presented to her Majesty in Council against the scheme) after any later date at which the petition is withdrawn, or her Majesty in Council directs the scheme to be laid before Parliament, and if Parliament be not then sitting, shall be so laid within three weeks after the beginning of the next ensuing session of Parliament; and if such scheme has lain before Parliament for not less than two months during the same session, then unless an address has been presented within such two months by one or other of the Houses of Parliament praying her Majesty to withhold her consent from such scheme or any part thereof, it shall be lawful for her Majesty by Order in Council to declare her approbation of such scheme or any part thereof to which such address does not relate (d).

(a) This section is substituted for sect. 41 of the End. Schools Act, 1869, which is repealed by sect. 20 of the present Act.

(b) See sect. 39 of the End. Schools Act, 1869, *ante*.

(c) Sect. 13, *ante*.

(d) In case of the scheme not being approved by her Majesty, the commissioners may proceed to prepare another: End. Schools Act, 1869, s. 43, *ante*.

Sect. 15
(b), (c), (d).

The order in council approving a scheme is conclusive evidence of its validity: End. Schools Act, 1869, s. 47, *ante*.

16. The Commissioners(a) shall make to the Committee of Council on Education in every year a report of their proceedings under the principal Act and this Act, and such report shall be laid before Parliament. Such report shall describe all schemes not laid before Parliament which have been approved by her Majesty during the year for which such report is made.

Annual
report.

(a) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

17. *The power of making and approving a scheme under the principal Act as amended by this Act shall continue as respects unopposed schemes until thirty-first December one thousand eight hundred and seventy-four, and as respects schemes against which a petition shall have been presented to the Committee of Council on Education, as in this Act provided, until the fifteenth August one thousand eight hundred and seventy-four, and no longer (a).*

Continuance
of powers
of making
schemes.

(a) Repealed by sect. 7 of the End. Schools Act, 1874. With regard to the further continuance of these powers, see sect. 6 of that Act, *post*, and note (c) thereto.

18. Whenever according to the rules, regulations, statutes, trusts, or constitution of any school, being an endowed school within the meaning of "The Endowed Schools Act, 1869"(a), and with regard to which the said Commissioners(b) are thereby empowered to make a new scheme, the head master or any other master is required to be a graduate of some specified university or universities, a graduate of any university of the United Kingdom having the degree which would be a qualification if it had been granted by one of the said specified

Graduate of
any univer-
sity of the
United King-
dom, if other-
wise fit, shall
be held quali-
fied where
the statutes
require the
head master
to be a
graduate of
Oxford or
Cambridge.

Sect. 18. universities, shall in future, if otherwise qualified, be eligible as such head master or other master.

(a) Sect. 6, *ante*.

(b) The Charity Commissioners: End. Schools Act, 1874, ss. 1 and 10, *post*.

Application of Act to schemes laid before Parliament during present session.

19. *Where a scheme has been laid before Parliament during the present session, but has not at the expiration of such session lain for forty days before Parliament, and no address has been presented by either House of Parliament praying her Majesty to withhold her consent from such scheme or any part thereof, the Committee of Council on Education may, if they think fit, cause to be published and circulated, in such manner as they think sufficient for giving information to all persons interested, a notice stating that unless within two months after the first publication of the notice such petition as is in this section mentioned is presented to the Committee of Council on Education such scheme may be forthwith approved by her Majesty.*

During the said two months a petition praying that the scheme may lie before Parliament during two months as directed by this Act may be presented to the Committee of Council on Education by any governing body, council, or rate-payers, who would, if such scheme were approved by such Committee after the commencement of this Act, be authorised by this Act to present a petition praying that such scheme may be laid before Parliament.

If no such petition is presented within the said two months it shall be lawful for her Majesty by Order in Council to declare her approbation of such scheme in like manner as if it had lain for forty days before Parliament in accordance with the principal Act.

Any scheme to which this section applies and which is not approved by her Majesty under this section shall continue to lie before Parliament, and the provisions of this Act shall apply in like manner as if such scheme had been laid before Parliament in pursuance of this Act (a).

(a) Repealed by the Stat. Law Rev. Act, 1883.

20. *The principal Act is hereby repealed as from the commencement of this Act to the extent mentioned in the third column of the schedule to this Act: Provided, that this repeal shall not—* **Sect. 20.**
Repeal.

- (a) *Affect anything duly done or suffered under any enactment hereby repealed ; or*
- (b) *Affect any right, obligation, or liability acquired or incurred under any such enactment ; or*
- (c) *Affect any legal proceeding or remedy in respect of such right, obligation, or liability (a).*

(a) This section and the schedule are repealed by the Stat. Law Rev. Act, 1883.

SCHEDULE (a).

A description or citation of a portion of an Act is inclusive of the words or other part first or last mentioned or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

<i>Session and Chapter.</i>	<i>Title.</i>	<i>Extent of Repeal.</i>
32 & 33 Vict. c. 56.	<i>The Endowed Schools Act, 1869.</i>	<i>Section thirty-seven down to "all persons interested," section thirty-nine from "Her Majesty by Order in Council may refer any such petition," down to "information for obtaining a scheme," and section forty-one, except as regards schemes which have lain for forty days before Parliament before the commencement of this Act.</i>

(a) See note (a) to sect. 20.

THE ENDOWED SCHOOLS ACT, 1874.

37 & 38 VICT. c. 87.

An Act to amend the Endowed Schools Acts.

[7th August, 1874.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Transfer of Powers.

Transfer of
powers of
Endowed
Schools Com-
missioners to
Charity Com-
missioners.

1. On and after the thirty-first day of December one thousand eight hundred and seventy-four all powers and duties by the Endowed Schools Acts (a) vested in or imposed on the Endowed Schools Commissioners (b) shall be transferred to and imposed on the Charity Commissioners, and, except as otherwise provided by this Act, shall be exercised and performed by the Charity Commissioners in like manner and form and subject to the same conditions, liabilities, and incidents respectively as such powers and duties have been exercised and performed by the Endowed Schools Commissioners, or as near thereto as circumstances permit.

On and after the thirty-first day of December one thousand eight hundred and seventy-four the Commissioners, secretary, assistant commissioners, and other persons appointed and employed in pursuance of the Endowed Schools Acts shall cease to hold office (c).

(a) End. Schools Acts, 1869 and 1873: sect. 9 of this Act, *post*.

(b) The commissioners appointed in pursuance of the End. Schools Act, 1869: sect. 9 of this Act, *post*.

(c) The paragraph in italics was repealed by the Stat. Law Rev. Act, 1883.

2. Her Majesty and her successors may at any time after the passing of this Act, by warrant under her sign manual, from time to time appoint any number of persons not exceeding two to be paid Charity Commissioners for England and Wales and a person to be secretary in addition to the three paid Charity Commissioners and secretary capable of being appointed under the Charitable Trusts Acts, 1853 to 1869 (*a*). The two additional Commissioners and additional secretary appointed in pursuance of this Act shall hold office during her Majesty's pleasure, and their salaries shall, unless otherwise directed by Parliament, cease to be paid after the expiration of five years from the said thirty-first day of December one thousand eight hundred and seventy-four (*b*).

Sect. 2.

Power to add to Charity Commissioners.

Save as in this section mentioned, the additional Commissioners shall have the same powers, perform the same duties, and stand in all respects in the same position as the other paid Charity Commissioners with the exception of the Chief Commissioner.

The Commissioners of her Majesty's Treasury may allow the Charity Commissioners to employ such number of assistant commissioners, officers, and clerks as the Commissioners of her Majesty's Treasury may think necessary for the purpose of enabling the said Charity Commissioners to perform the additional duties imposed upon them by this Act.

(*a*) See sects. 1 and 2 of the Charit. Trusts Act, 1853, *ante*.

(*b*) By the End. Schools Acts Continuance Act, 1879 (42 & 43 Vict. c. 66), the payment of these salaries was extended to the end of 1882, and it has since been continued annually by the Expiring Laws Continuance Acts, together with the power of making schemes: see note (*c*) to sect. 6 of this Act, *post*.

3. *There shall be repealed so much of the Charitable Trusts Acts, 1853 to 1869, as regulates the amounts of the salaries of the Commissioners, their secretary and inspectors; and* (*a*) there shall be paid to the Commissioners, their secretary or secretaries, assistant commissioners, inspectors, officers, and clerks, whether appointed under this Act or under the said Charitable Trusts Acts, out of moneys

Salaries of Charity Commissioners and their officers.

Sect. 3.

provided by Parliament, such salaries as the Treasury may from time to time determine: Provided that no decrease shall be made in pursuance of this section in the salary of any Charity Commissioner, secretary, inspector, officer, or clerk appointed before the passing of this Act under the said Charitable Trusts Acts, or any of them.

(a) The words in italics were repealed by the Stat. Law Rev. Act, 1883.

See sect. 4 of the Charit. Trusts Act, 1853, and sect. 22 of the Charit. Trusts Act, 1860, *ante*.

Amendment of Law.

Exercise of
certain
powers by
Charity Com-
missioners.

4. Any power by the Endowed Schools Act, 1869 (*a*), vested in the Charity Commissioners, upon application made to them by the Commissioners under the said Act, may after the said thirty-first day of December one thousand eight hundred and seventy-four be exercised by the Charity Commissioners of their own motion.

(a) Sect. 52, *ante*.

Quorum of
Commis-
sioners (*a*).

5. A scheme of the Charity Commissioners made in pursuance of the powers of this Act and the Endowed Schools Acts (*b*), or any of them, shall not be submitted (*c*) to the Committee of Council on Education unless it has been approved at a meeting of the Board at which there are present not less than three Commissioners (of whom one shall be the Chief Commissioner, or, in his absence from illness or unavoidable cause, such other Charity Commissioner as may for the time being be named by the Committee of Council on Education); in all other respects one Charity Commissioner may act under the Endowed Schools Acts as amended by this Act.

(a) This section is substituted for sect. 48 of the End. Schools Act, 1869, repealed by sect. 7 of the present Act.

(b) End. Schools Acts, 1869 and 1873: see sect. 9 of this Act, *post*.

(c) End. Schools Act, 1869, s. 36, *ante*.

Miscellaneous and Repeal.

Continuance
of powers
transferred

6. The powers of making schemes under the Endowed Schools Acts (*a*) as amended by this Act (*b*) shall continue

in force for a period of five years from the said thirty-first day of December one thousand eight hundred and seventy-four(c); and during the continuance of such powers any court or judge shall not, with respect to any endowed school or educational endowment which can be dealt with by a scheme under this Act and the Endowed School Acts, or any of such Acts, make any scheme or appoint any new trustees without the consent of the Committee of Council on Education (d).

Sect. 6.

to Charity
Commis-
sioners.

(a) End. Schools Acts, 1869 and 1873: sect. 9 of this Act, *post*.

(b) See sects. 1 and 5 of the present Act, *ante*.

(c) By the End. Schools Continuance Act, 1879 (42 & 43 Vict. c. 66), s. 2, these powers were continued to the 31st of December, 1882, and they have since been continued by the Expiring Laws Continuance Acts, 1882—1888. By sect. 59 (now repealed) of the End. Schools Act, 1869, these powers were granted up to 31st December, 1873, and by sect. 17 (now repealed) of the End. Schools Act, 1873, they were continued to 15th August, 1874.

(d) A similar provision was contained in sect. 52 of the End. Schools Act, 1869, repealed by sect. 7 of this Act, *post*.

This provision does not apply in the case of a mixed endowment in respect of which, by reason of the dissent of the governing body, a scheme under these Acts cannot be made: *Att.-Gen. v. Moises*, stated in App. III. to this Book, *post*. page 555.

7. *On and after the said thirty-first day of December one thousand eight hundred and seventy-four the enactments set forth in the schedule annexed hereto shall be repealed to the extent to which such enactments are therein expressed to be repealed.*

Repeal of
Acts.

Provided that the repeal enacted in this Act shall not affect—

(1.) *Anything duly done under any enactment hereby repealed:*

(2.) *Any right or privilege acquired or any liability incurred under any enactment hereby repealed (a).*

(a) This section and the schedule are repealed by the Stat. Law Rev. Act, 1883.

8. *Notwithstanding the seventeenth section of the Endowed Schools Act, 1873, any scheme which has before the passing of this Act been submitted by the Endowed Schools Commis-*

Saving clause
as to certain
schemes.

Sect. 8. *sioners to the Committee of Council on Education for approval may be proceeded with.*

Provided, that with respect to every such scheme which has not been approved by the Committee of Council on Education before the passing of this Act, such Committee shall before approving the same cause such scheme, after the passing of this Act, and that notwithstanding any prior publication and notice, to be published and circulated in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that during one month after the publication of such notice the Committee of Council on Education will receive any objections or suggestions made to them in writing respecting such scheme (a).

(a) Repealed by the Stat. Law Rev. Act, 1883.

Definitions.

9. In this Act, so far as is consistent with the context, the expressions following have the meanings hereafter assigned to them; that is to say,

32 & 33 Vict.
c. 53.
36 & 37 Vict.
c. 87.

The expression "The Endowed Schools Acts" means the Endowed Schools Acts, 1869 and 1873:

The expression "The Endowed Schools Commissioners" means the Commissioners appointed in pursuance of the Endowed Schools Act, 1869 (a):

The expression "The Charity Commissioners" means the Charity Commissioners for England and Wales.

(a) Sect. 31, *ante*.

Construction and short title.

10. This Act, so far as consistent with the tenor thereof, shall be construed as one with the Endowed Schools Acts, as amended by this Act; and in the construction of the Endowed Schools Acts the expression "the Commissioners" shall, unless there is something in the context inconsistent therewith, on and after the said thirty-first day of December one thousand eight hundred and seventy-four, mean the Charity Commissioners; and this Act and the other Acts mentioned in this section may be cited together as the Endowed Schools Acts,

1869, 1873, and 1874, and this Act may be cited Sect. 10. separately as "The Endowed Schools Act, 1874."

SCHEDULE (a).

Acts partly repealed on and after the thirty-first day of December one thousand eight hundred and seventy-four.

<i>Session and Chapter.</i>	<i>Abbreviated Title.</i>	<i>Extent of Repeal.</i>
32 & 33 Vict. c. 56.	<i>The Endowed Schools Act, 1869.</i>	<i>The first paragraph of section fifty-two, and the whole of sections thirty-one, forty-eight, and fifty-nine.</i>
36 & 37 Vict. c. 87.	<i>The Endowed Schools Act, 1873.</i>	<i>Section seventeen.</i>

(a) The Schedule was repealed by the Stat. Law Rev. Act, 1883.

WELSH INTERMEDIATE EDUCATION ACT, 1889.

52 & 53 VICT. c. 40.

An Act to promote Intermediate Education in Wales.

[12th August, 1889.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title
and construc-
tion.

1. This Act may be cited for all purposes as the Welsh Intermediate Education Act, 1889, and shall, so far as is consistent with the tenour thereof, be construed as one with the Endowed Schools Acts (*a*), and may be cited together with those Acts as the Endowed Schools Acts, 1869 to 1889. This Act shall come into operation on the first day of November next after the passing thereof, which day is in this Act referred to as the commencement of this Act.

(*a*) The End. Schools Acts, 1869, 1873, and 1874; sect. 17 of this Act, *post*.

Purpose of
Act.

2. The purpose of this Act is to make further provision for the intermediate (*a*) and technical (*a*) education of the inhabitants of Wales and the county of Monmouth.

(*a*) Defined by sect. 17 of this Act, *post*.

Sect. 3.*Schemes for Intermediate Education.*

3.—(1.) It shall be the duty of the joint education committee as hereinafter mentioned (*a*) of every county (*b*) in Wales and of the county of Monmouth to submit to the Charity Commissioners a scheme or schemes for the intermediate and technical education (*b*) of the inhabitants of their county, either alone or in conjunction with the inhabitants of any adjoining county or counties, specifying in each scheme the educational endowments (*c*) within their county which in their opinion ought to be used for the purpose of such scheme.

Schemes by
joint educa-
tion com-
mittee.

(2.) A county council may recommend their committee to insert in such scheme a provision for a payment out of the county rate to an amount not exceeding that in this Act mentioned of the expenses of carrying into effect the scheme, or any particular part thereof, and such provision may accordingly, if it is thought fit, be inserted in the scheme.

(3.) Such scheme, if the Commissioners (after such examination or inquiry as mentioned in section thirty-two of the Endowed Schools Act, 1869 (*d*)) approve it, either without modification, or with such modifications as may be assented to by the joint education committee, shall be adopted and proceeded on by the Commissioners in the same manner as if it were a draft scheme originally prepared by themselves.

32 & 33 Vict.
c. 56.

(4.) If the scheme is not so adopted by the Commissioners, it shall be deemed to be a scheme prepared and submitted by a governing body to the Commissioners within the meaning of section thirty-two of the Endowed Schools Act, 1869 (*d*), and shall be dealt with accordingly.

(5.) Where a county council recommend a payment out of the county rate a scheme may be made in pursuance of this Act, although there is no other endowment.

(6.) The Charity Commissioners may, if they think

Sect. 3. fit, accept a joint scheme from two or more joint education committees.

(7.) A joint education committee may, instead of submitting a scheme, submit to the Charity Commissioners proposals for a scheme, and such proposals may include, if so recommended by the county council, a payment out of the county rate; and the Commissioners shall prepare a scheme for carrying into effect such proposals, either with or without modifications, but any modification to which the joint education committee do not assent shall be struck out of the scheme, and the scheme as so prepared, with the omission of any modification to which the joint education committee do not assent, shall be deemed for the purposes of this section to be a scheme submitted by a joint education committee to the Charity Commissioners, and the Commissioners shall proceed accordingly.

(a) Sect. 5 of this Act, *post*.

(b) Defined by sect. 17 of this Act, *post*.

(c) Defined by sect. 5 of the End. Schools Act, 1869, *ante*, p. 598.

(d) *Ante*, p. 623.

Restrictions
on powers of
joint educa-
tion com-
mittee.

4.—(1.) A joint education committee(a) shall not without the assent of the county council direct by their scheme any contribution to be made out of the county rate exceeding the amount recommended by the county council.

(2.) Where any part of the expenses of the establishment or maintenance of a school or of scholarships attached thereto is to be defrayed out of the county rate a scheme relating to such school shall provide that the county council shall be adequately represented on the governing body of such school.

(3.) Where a scheme under this Act does not relate to a school maintained out of the endowment, or forming part of the foundation, of any cathedral or collegiate church, or where a scheme under this Act does not relate to any other educational endowment which by section

Sect. 4.

nineteen of the Endowed Schools Act, 1869 (*b*), is excepted from the foregoing provisions of that Act therein mentioned, such scheme shall, in addition to the provisions of section fifteen of the said Act (*c*), provide that no religious catechism or religious formulary which is distinctive of any particular denomination shall be taught to a scholar attending as a day scholar at the school established or regulated by the scheme, and that the times for prayer or religious worship or for any lesson or series of lessons on a religious subject shall be conveniently arranged for the purpose of allowing the withdrawal of a day scholar therefrom in accordance with the said section fifteen.

(4.) Where any power of appeal to the Queen in Council, or power to present a petition praying that a scheme may be laid before Parliament, is given by the Endowed Schools Acts (*d*) to any persons or body of persons in relation to any endowment, a like power may be exercised by a county council required by the scheme to contribute a sum out of the county rate, or by a joint education committee (*a*) in relation to any matter which has been introduced into the scheme against the wishes of the county council or committee, as the case may be, as expressed in objections sent in writing to the Charity Commissioners before the scheme was submitted by those Commissioners for the approval of the Education Department.

(*a*) See sect. 5, *post*.

(*b*) *Ante*, p. 612.

(*c*) *Ante*, p. 609.

(*d*) See End. Schools Act, 1869, s. 39, and End. Schools Act, 1873, s. 14, *ante*.

Constitution and Powers of Joint Education Committee.

5. For the purposes of this Act there shall be appointed in every county in Wales and in the county of Monmouth a joint education committee of the county council of such county consisting of three persons nomi-

Establish-
ment of joint
education
committee.

Sect. 5. nated by the county council, and two persons, being persons well acquainted with the conditions of Wales and the wants of the people, preference being given to residents within the county for which such joint committee is to be appointed, nominated by the Lord President of her Majesty's Privy Council. Any vacancy in the joint education committee among the persons appointed by the county council may be filled up by the county council, and any vacancy among the persons nominated by the Lord President may be filled up by the Lord President.

Transaction
of business
by and pro-
ceedings of
joint educa-
tion com-
mittee.

6.—(1.) Sub-sections one and two of section eighty-two of the Local Government Act, 1888 (*a*), respecting the proceedings of committees of county councils, shall apply to proceedings of the joint education committee of a county council under this Act, but the acts and proceedings of the committee shall not be required to be submitted to the county council for their approval.

(2.) The county council shall make proper provision for enabling the committee to transact its business, and the clerk of the county council shall act as the clerk of the joint education committee. Any act of the committee may be signified under the hands of any three members thereof or under the hand of the clerk.

(3.) Any of the assistant commissioners of the Charity Commissioners shall be at liberty to attend any meeting of a joint education committee, and to take part in the proceedings, but shall not have a right to vote.

(*a*) Sub-sects. (1) and (2) of sect. 82 of the Local Government Act, 1888, are as follows:—

Sub-sect. (1). "A county council appointing under this Act any committee may from time to time make, vary, and revoke regulations respecting the quorum and proceedings of such committee, and as to the area (if any) within which it is to exercise its authority; and subject to such regulations the proceedings and quorum, and the place of meeting, whether within or without the county, shall be such as the committee may from time to time direct, and the chairman of any meeting of the committee shall have a second or casting vote."

Sub-sect. (2). "Every committee shall report its proceedings to the council

by whom it was appointed, but to the extent to which the council so direct, the acts and proceedings of the committee shall not be required by the provisions of the Municipal Corporations Act, 1882, to be submitted to the council for their approval."

Sect. 6.

7.—(1.) Where a county council has recommended that any scholarship should be paid out of the county rate a scheme under this Act may contain provisions to that effect. Contributions
from county
rate.

(2.) Where a county council has recommended that any annual contribution should be made out of the county rate a scheme under this Act may direct the contribution so recommended or any less contribution to be made accordingly, and shall specify the persons to whom the contribution so directed to be made is from time to time to be paid.

(3.) The recommendation of a county council in respect of a contribution out of the county rate, and a scheme giving effect to such recommendation, may provide that such contribution shall be either a fixed annual sum, or an annual sum not exceeding a certain amount, such amount to be determined annually in manner specified in the scheme.

(4.) The annual contribution to be paid to any school out of the county rate in pursuance of any scheme shall not exceed the amount stated in such scheme, but may be reduced by an amending scheme made on the application of the county council or of the governing body of such school.

Finance.

8.—(1.) Where a scheme under this Act providing for a contribution out of a county rate comes into operation, the amount from time to time payable out of the county rate in pursuance of such scheme shall be paid by the county council out of the county fund. Expenses of
county
council.

(2.) That amount and any expenses otherwise incurred by a county council in pursuance of this Act shall be paid as general expenses of the county council.

Sect. 8.

(3.) The addition made to the county rate in any county for the purpose of defraying contributions for intermediate and technical education (a) under this Act shall not in any year exceed one halfpenny in the pound, on the aggregate amount of the rateable value of the property in the county, as ascertained for the purpose of the levy of the county contributions.

(4.) Every increase of rate levied under this section shall, in all precepts for the levy thereof, be described as a separate item of rate, and when collected from the individual ratepayers shall be specified as a separate item of rate.

(a) Defined by sect. 17 of this Act, *post*.

Contribution
from Treas-
ury.

9.—(1.) The Commissioners of Her Majesty's Treasury shall annually out of moneys provided by Parliament pay in aid of each school aided by the county and subject to a scheme made under this Act such sums as hereinafter mentioned.

(2.) The sums to be so paid shall depend on the efficiency of the schools aided by the county, as ascertained by such annual inspection and report as may be required by the regulations from time to time made by the Treasury for the purposes of this section, and shall be of such amounts as may be fixed by those regulations, and shall be paid in manner provided by those regulations.

(3.) The aggregate amount of the sums paid by the Commissioners of Her Majesty's Treasury in any year in respect of the schools in any county shall not exceed the amount payable in that year in pursuance of this Act out of the county rate.

(4.) The Treasury may from time to time make, and, when made, vary and revoke, regulations for the purposes of this section.

Power to
Public Works
Loan Com-

10. The purposes for which the governing body of a school may be authorised in pursuance of this Act to

borrow money shall be purposes for which the Public Works Loan Commissioners may lend to such governing body.

Sect. 10.

missioners to lend.

Supplemental Provisions.

11. The powers conferred by this Act on a joint education committee shall not, unless Parliament otherwise directs, be exercised by the committee after the expiration of three years from the date of the commencement of this Act, and, during the continuance of the powers of the committee under this Act, all powers which otherwise might have been exercised by the Charity Commissioners of making, establishing, or submitting (independently of any scheme submitted by the joint education committee) a scheme for the administration of any educational endowments within the county of such committee, shall, except with the consent of the Education Department, be suspended, and not be exercised by them in relation to such endowments. Nothing in this Act shall prevent any proceedings under the Endowed Schools Acts in relation to any scheme of which a draft has been prepared, published, and circulated before the commencement of this Act, in pursuance of sections thirty-two and thirty-three(a) of the Endowed Schools Act, 1869, and such scheme may be proceeded with, submitted for approval, and come into operation as if this Act had not passed.

Duration of powers of joint education committee, and suspension of powers of Charity Commissioners.

(a) *Ante*, pp. 623, 625.

12.—(1.) An educational endowment(a) within the county of a joint education committee means any educational endowment which is applied in the county or is appropriated for the benefit of the natives or inhabitants of the county, or of some of such natives or inhabitants, or their children, or where the benefits of such endowment are divisible between two counties or between the counties in Wales and the county of Monmouth, or any of them, and any place outside of Wales and the county

Description of endowments applicable to purpose of Act.

Sect. 12. of Monmouth, then means so much of the endowment as the Charity Commissioners may determine to be applicable for the benefit of the county of the joint education committee.

33 & 34 Vict.
c. 75.

36 & 37 Vict.
c. 87.

(2.) Any school or endowment of a school to which section seventy-five (*b*) of the Elementary Education Act, 1870, applies, and any endowed school to which section three of the Endowed Schools Act, 1873 (*c*), applies, shall, if the school is in the county of a joint education committee under this Act, be for the purposes of the Endowed Schools Acts and this Act an educational endowment (*a*) and endowed school (*d*) within the county of such committee.

(*a*) See sect. 5 of the End. Schools Act, 1869, *ante*.

(*b*) This section is set out in note (*d*) to sect. 8 of the End. Schools Act, 1869, *ante*, p. 602.

(*c*) *Ante*, p. 639.

(*d*) See sect. 6 of the End. Schools Act, 1869, *ante*.

Construction
of Act in
relation to
endowments
applicable to
purposes
thereof.

13. For the purposes of any scheme under this Act every notice relating to the scheme shall be sent to the joint education committee concerned therein in like manner as if they were a governing body, and such committee shall, during the duration of their powers under this Act, have the same power of applying to the Charity Commissioners with respect to any educational endowment within their county as if they were the governing body of that endowment. Nothing in this Act shall authorise the making of any scheme interfering with—

(1.) Any endowment given either by present gift made subsequently to the passing of the Endowed Schools Act, 1869, or by the will of a testator who died subsequently to the passing of the said Act, unless the founder or governing body of such endowment assents to the scheme.

In the case of an endowment or part of an endowment given either by present gift made subsequently to the

passing of the Endowed Schools Act, 1869, or by the will of a testator who died subsequently to the passing of the said Act, sections twenty-five and twenty-six (a) of the said Act shall for the purposes of a scheme under this Act, and subject to the provisions of this Act, apply in like manner as if the same and any older endowment or part of an endowment were respectively in the said sections substituted for an endowment or part of an endowment originally given to charitable uses less or more than fifty years before the commencement of the said Act. Sect. 13.

(a) *Ante*, p. 619.

14. Nothing in the Endowed Schools Acts which is inconsistent with any of the provisions of this Act shall apply in the case of any scheme under this Act, but subject to this enactment the powers conferred by this Act shall be in addition to, and not in derogation of, the powers under the said Act. Exemption of schemes from certain provisions of Endowed Schools Acts.

15. The Charity Commissioners shall in every year cause to be laid before both Houses of Parliament a report of the proceedings under this Act during the preceding year. Report by Charity Commissioners.

16.—(1.) In this Act the expression “county” means an administrative county as defined in the Local Government Act, 1888 (a), and includes a county borough within the meaning of that Act (b); and the expression “county council” includes the council of a county borough. Application of Act to counties and county boroughs. 51 & 52 Vict. c. 41.

(2.) Any sums payable by the council of a county borough in pursuance of this Act shall be paid out of the borough fund or borough rate.

(a) An “administrative county,” as defined by sect. 100 of the Local Government Act, 1888, means “the area for which a county council is elected in pursuance of this Act, but does not (except when expressly mentioned) include a county borough.”

(b) A “county borough” is a borough which is for the purposes of the

Sect. 16. Local Government Act, 1888, constituted an "administrative county": see sect. 31 of that Act. A list of the county boroughs is contained in Sched. III. to the same Act.

General definitions.

17. In this Act unless there is something in the context inconsistent therewith—

The expression "intermediate education" means a course of education which does not consist chiefly of elementary instruction in reading, writing, and arithmetic, but which includes instruction in Latin, Greek, the Welsh and English language and literature, modern languages, mathematics, natural and applied science, or in some of such studies, and generally in the higher branches of knowledge, but nothing in this Act shall prevent the establishment of scholarships in higher or other elementary schools;

The expression "technical education" includes instruction in—

- (i.) Any of the branches of science and art with respect to which grants are for the time being made by the department of Science and Art;
- (ii.) The use of tools, and modelling in clay, wood, or other material;
- (iii.) Commercial arithmetic, commercial geography, book-keeping, and shorthand;
- (iv.) Any other subject applicable to the purposes of agriculture, industries, trade, or commercial life and practice, which may be specified in a scheme, or proposals for a scheme, of a joint education committee as a form of instruction suited to the needs of the district;

but it shall not include teaching the practice of any trade, or industry, or employment.

32 & 33 Vict.
c. 56.
36 & 37 Vict.
c. 87.
37 & 38 Vict.
c. 87.

The expression "Endowed Schools Acts" means the Endowed Schools Acts, 1869, 1873, and 1874;

The expression "Education Department" means the Lords of the Committee of Her Majesty's Privy Council on Education;

The expression "Charity Commissioners" means the Sect. 17.
Charity Commissioners for England and Wales;

The expression "scholarship" includes exhibition or other educational emolument;

The expression "parent" includes guardian and every person who is liable to maintain or has the actual custody of a child;

The expression "scheme under this Act" means a scheme under the Endowed Schools Act as amended by this Act.

BISHOPS TRUSTS SUBSTITUTION.

21 & 22 VICT. c. 71.

An Act to substitute in certain cases the Bishop of one Diocese for the Bishop of another as a Trustee of certain Trusts.

[2nd August, 1858.]

WHEREAS it frequently happens that the bishop of a diocese is a trustee of real or personal estate for charitable or other public purposes or is invested with powers in relation to charities and public trusts within his diocese: And whereas, in consequence of the altered limits of dioceses in England it is expedient to make new provisions for such cases: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Charity Commissioners may make order substituting the bishop of one diocese for the bishop of another, as to certain trusts, &c.

1. In all cases in which the bishop of a diocese is as such bishop, alone or jointly with any other person or persons, trustee of or invested with any power of nomination or control or other power in relation to any charitable foundation or other trust for public purposes within, or in favour of the clergy, parishioners, or other persons or objects of or belonging to, any place which at the time when such bishop or his predecessor was first invested with such trust or power was within that diocese, or concerning any church or chapel in any such place, and by reason of an alteration of the limits of the diocese such place is transferred to and included in some other diocese, it shall be lawful for the Charity Commissioners

Sect. 1.

for England and Wales, if it appear to them that such trust or power was first so vested in the bishop or his predecessor by reason of the place being then within his diocese, and may be conveniently vested in the bishop in whose diocese such place is included, to make an order under their seal substituting from the date thereof for the first-mentioned bishop the bishop of the diocese in which such place is included, and such order shall operate to vest in such lastly-mentioned bishop, either solely or jointly with any other person or persons, as the case may require, all estate, property, stock, funds, monies, securities, rights, titles, patronage, and authority in relation to the charity or trust, as fully and effectually as if he had been originally appointed to have and exercise the same.

2. Provided, that every order to be made under this Act shall be made upon the application of the bishops concerned in such order, or one of them; and no such order shall be made in relation to any advowson or right of patronage or presentation, part of the possessions of a see, which might be exchanged or otherwise disposed of by scheme of the Ecclesiastical Commissioners confirmed by her Majesty in Council; nor shall any such order under this Act be made in relation to any ecclesiastical patronage or power of nomination or appointment of any curate, chaplain, or spiritual person under any trust without the consent of the Ecclesiastical Commissioners under their common seal.

Order to be made on the application of the bishops or of one of them, &c.

3. Any costs necessarily incident to effecting the aforesaid transfers shall be defrayed by order of the said Charity Commissioners out of the property, real or personal, as the said Charity Commissioners may direct, which shall be transferred as aforesaid.

How costs are to be defrayed.

4. Provided always, that nothing herein contained shall be construed to extend to or in any way affect

Act not to affect trusts within the

Sect. 4. trusts of a visitorial or any other nature or character exercised in or over any college, hall, or school within the precincts or under the jurisdiction or government of either of the universities of Oxford or Cambridge, or in or over the colleges or schools of Saint Mary at Eton, Saint Mary at Winchester, and Saint Peter at Westminster.

Act not to
affect certain
endow-
ments, &c.

5. Provided also, that nothing in this Act contained shall be construed to extend to endowments of an eleemosynary or any other character, whose foundation trusts are or may be governed by any specific Act of Parliament.

THE CHARITABLE TRUSTEES INCORPORATION ACT, 1872.

35 & 36 VICT. c. 24.

An Act to facilitate the Incorporation of Trustees of Charities for Religious, Educational, Literary, Scientific, and Public Charitable Purposes, and the Enrolment of certain Charitable Trust Deeds. [27th June, 1872.]

WHEREAS it is expedient to facilitate the incorporation of the trustees of charities established for religious, educational, literary, scientific, or public charitable purposes, and to provide for the due protection and transmission of the property belonging to or vested in such charities, or trustees of such charities, and to diminish the expense of enrolment under an Act passed in the thirtieth year of the reign of her present Majesty, intituled "An Act to make further provision for the enrolment of certain deeds, assurances, and other instruments relating to charitable trusts:"

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. From and after the passing of this Act it shall be lawful for the trustees (*b*) or trustee for the time being of any charity for religious, educational, literary, scientific, or public charitable purposes (*c*), to apply, in manner hereinafter mentioned (*d*), to the Charity Commissioners for England and Wales for a certificate of registration of the

Upon application of trustees of any charity, Commissioners may grant certificate of registration as a corporate body (*a*).

Sect. 1. trustees of any such charity as a corporate body ; and if the Commissioners, having regard to the extent, nature, and objects and other circumstances of the charity, shall consider such incorporation expedient, they may grant such certificate accordingly, subject to such conditions or directions as they shall think fit to insert in their certificate relating to the qualifications and number of the trustees, their tenure or avoidance of office, and the mode of appointing new trustees, and the custody and use of the common seal ; and the trustees of such charity shall thereupon become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, of which the device shall be approved by the Commissioners, and power to sue and be sued in their corporate name, and to hold and acquire, notwithstanding the statutes of mortmain(e), and by instruments under their common seal to convey, assign, and demise, any present or future property, real or personal, belonging to, or held for the benefit of, such charity, in such and the like manner, and subject to such restrictions and provisions, as such trustees might, without such incorporation, hold or acquire, convey, assign, or demise the same for the purposes of such charity : Provided that nothing herein contained shall be taken or construed so as to extend, modify, or control any of the provisions of an Act passed in the ninth year of his Majesty King George the Second, chapter thirty-six, intituled "An Act to restrain the disposition of lands whereby the same become unalienable," or to make valid any gift, grant, or purchase which would be invalid under the enactments contained in that Act.

Benefits of
incorporation.

(a) It has been seen (*ante*, p. 562) that the management of the estates of charities by corporations has been found to be attended with serious disadvantages. On the other hand, there are certain obvious advantages derivable from incorporation. One, not the least of them, is that the establishment of an immortal body obviates the great and recurring expense of conveyances and transfers on every appointment of new trustees.

Object of
Act.

The present Act was designed to secure the advantages, without the disadvantages, of incorporation, this object being obtained by means of a clause (see sect. 5, *post*), similar to that which it had long been the practice to

introduce into charters of incorporation, providing that the liability of trustees and managers should remain unaffected by the incorporation.

Sect. 1
(a)–(e).

The Act has, however, been little used (see *ante*, p. 452). The reason is, that all the benefits of incorporation are obtained by vesting the charity property in the official trustee of charity lands, and the official trustees of charitable funds respectively. See *ante*, p. 563.

Benefits secured by vesting in official trustees.

(b) Defined by sect. 14 of this Act, *post*.

(c) For the meaning of “public charitable purposes,” see sect. 14 of this Act, *post*.

(d) Sect. 3, *post*.

(e) Now Part I. of the Mortm. and Charit. Uses Act, 1888, *ante*.

The effect of this and the following provision is, that corporations constituted under this section are relieved from the disabilities to which, as corporations, they would otherwise have been subject under the Statutes of Mortmain (now Part I. of the Mortm. and Charit. Uses Act, 1888). But the provisions of 9 Geo. II. c. 36 (now Part II. of the Mortm. and Charit. Uses Act, 1888), which relate to all gifts of land, or an interest in land to charities, whether incorporated or not, are not affected by the present section.

2. The certificate of incorporation shall vest in such body corporate all real and personal estate, of what nature or tenure soever, belonging to or held by any person or persons in trust for such charity, and thereupon any person or persons in whose name or names any stocks, funds, or securities shall be standing in trust for the charity, shall transfer the same into the name of such body corporate, except as hereinafter provided; and all covenants and conditions relating to any such real estate enforceable by or against the trustees thereof before their incorporation shall be enforceable to the same extent and by the same means by or against them after their incorporation: Provided always, that if such property shall be of copyhold or customary tenure, and liable to the payment of any fine or heriot on the death or alienation of the tenant or tenants thereof, it shall be lawful for the lord or lady of the manor of which such property shall be holden, on the granting of the said certificate, and at the expiration of every period of forty years thereafter so long as such property shall belong to such body corporate, to receive and take a sum corresponding to the fine and heriot, if any, which would have been payable by law upon the death or alienation

Estate to vest in body corporate.

Sect. 2. of the tenant or tenants thereof, and to recover the same by any means which such lord or lady could have used in the event of the death or alienation of the tenant or tenants of such property, such payments to be in full of all fines and heriots payable in respect of the same property: Provided also, that such certificate shall not have the effect of summarily transferring or directing the transfer to the incorporated trustees any stocks, funds, or securities held by the Official Trustees of Charitable Funds for the benefit of the charity, but the same shall be transferable only by the official trustees to the incorporated trustees under the discretionary order of the Commissioners, and by the ordinary means of transfer or assignment.

Particulars
respecting
application.

3. Every application to the Commissioners for a certificate under this Act (*a*) shall be in writing, signed by the person or persons (*b*) making the same, and shall contain the several particulars specified in the schedule hereto, or such of them as shall be applicable to the case. The said Commissioners may require such declaration or other evidence in verification of the statements and particulars in the application, and such other particulars, information, and evidence, if any, as they may think necessary or proper.

(*a*) See sect. 1, *ante*.

(*b*) The trustees or trustee of the charity: sect. 1, *ante*.

Nomination
of trustees,
and filling
up vacancies.

4. Before a certificate of incorporation shall be granted (*a*), trustees of the charity shall have been effectually appointed to the satisfaction of the Commissioners, and where a certificate of incorporation shall have been granted vacancies in the number of the trustees of such charity shall from time to time be filled up so far as shall be required by the constitution or settlement of the charity, or by any such conditions or directions as aforesaid, by such legal

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means as would have been available for the appointment of new trustees of the charity if no certificate of incorporation had been granted, or otherwise as shall be required by such conditions or directions as aforesaid, and the appointment of every new trustee shall be certified by or by the direction of the trustees to the Commissioners, either upon the completion of such appointment or when the next return of the yearly income and expenditure of the charity shall or ought to be made to the Commissioners under the general law (*b*), with which the certificate of such appointment shall be sent, and within one month after the expiration of each period of five years after the grant of a certificate of incorporation, or whenever required by the Commissioners, a return shall be made to the said Commissioners by the then trustees of the names of the trustees at the expiration of each such period with their residences and additions.

(a) Sect. 1, *ante*.

(b) See Charit. Trusts Amend. Act, 1855, s. 44, *ante*.

5. After a certificate of incorporation has been granted under the provisions of this Act all trustees of the charity, notwithstanding their incorporation, shall be chargeable for such property as shall come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects, and defaults, and for the due administration of the charity and its property, in the same manner and to the same extent as if no such incorporation had been effected, and nothing herein contained shall diminish or impair any control or authority exerciseable by the Commissioners over the trustees who shall be so incorporated, but they shall remain subject jointly and separately to such control and authority as if they were not incorporated (*a*).

Liability of trustees and others, notwithstanding incorporation.

(a) See n. (a) to sect. 1 of this Act, *ante*.

6. A certificate of incorporation so granted shall be

Certificate to be evidence

Sect. 6.
of compliance with
requisitions.

conclusive evidence that all the preliminary requisitions herein contained and required in respect of such incorporation have been complied with, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which incorporation has taken place.

Commissioners to
keep record
of applica-
tions for
certificates,
&c., and
charge fees
for inspec-
tion.

7. The said Commissioners shall keep a record of all such applications for and certificates of incorporation, and shall preserve all documents sent to them under the provisions of this Act, and any person may inspect such documents, under the direction of the Commissioners, and any person may require a copy or extract of any such document to be certified under the hand of the secretary (a) or chief clerk of the said Commissioners, and there shall be paid for such certified copy or extract a fee, to be fixed by the Commissioners, not exceeding fourpence for each folio of such copy or extract.

(a) Or any officer authorised by order of the Board of Charity Commissioners to act on behalf of the secretary: Charit. Trusts Act, 1887, s. 3, *ante*.

Enforcement
of orders and
directions
of Commis-
sioners.

8. All conditions and directions inserted in any certificate of incorporation (a) shall be binding upon and performed or observed by the trustees as trusts of the charity, and shall also be enforceable by the same means or in the same manner as any orders made by the Commissioners under their ordinary jurisdiction may now be enforced (b).

(a) See sect. 1, *ante*.

(b) See Charit. Trusts Act, 1853, s. 14, and Charit. Trusts Amend. Act, 1855, s. 9, *ante*.

Applications
and certifi-
cates to be
stamped.

9. Every application for a certificate of incorporation under this Act, and every such certificate, shall be charged with a stamp duty of ten shillings, and a stamp denoting the payment of that duty shall be impressed or fixed upon such application or certificate.

10. After the incorporation of the trustees of any charity pursuant to this Act every donation, gift, and disposition of property, real or personal, theretofore lawfully made (but not having actually taken effect), or thereafter lawfully made by deed, will, or otherwise to or in favour of such charity, or the trustees thereof, or otherwise for the purposes thereof, shall take effect as if the same had been made to or in favour of the incorporated body or otherwise for the like purposes.

Sect. 10.

Gifts to charity before incorporation to have same effect afterwards.

11. Every contract made or entered into by the trustees of a charity, which would be valid and binding according to the constitution, settlement, or rules of the charity, if no such incorporation had taken place as aforesaid, shall be valid and binding although the same shall not have been made or entered into under the common seal of the trustees.

Contracts not under seal to be binding in certain cases.

12. Any company or person who shall make or permit to be made any transfer or payment bonâ fide, in reliance on any instruments to which the common seal of any body corporate created under this Act is affixed, shall be indemnified and protected in respect of such transfer or payment, notwithstanding any defect or circumstance affecting the execution of the instrument.

Payments on transfers in reliance on corporate seal protected.

13. *And whereas by an Act passed in the thirtieth year of the reign of her present Majesty, chapter fifty-seven, intituled "An Act to make further provisions for the enrolment of certain Deeds, Assurances, and other instruments relating to Charitable Trusts," provision was made for the enrolment upon application by summons in a summary way to the Court of Chancery, and by order of the Court made upon such application of certain deeds, assurances, and other instruments relating to charitable trusts, and it is expedient to extend such provision and to facilitate the enrolling of deeds, assurances, and instruments relating to charitable trusts where the original deeds creating such trusts have been lost, or when the same*

Enrolment where deeds have been lost or not duly enrolled.

Sect. 13.

have not been enrolled in proper time: Be it enacted, from and after the passing of this Act, if the clerk of enrolments in Chancery for the time being shall be satisfied, by affidavit or otherwise, that the deed, assurance, or other instruments conveying or charging the hereditaments, estate, or interest for charitable uses was made really and bonâ fide for full and valuable consideration actually paid at or before the making or perfecting thereof, or reserved by way of rentcharge or other annual payment, or partly paid at or before the making or perfecting of such deed, assurance, or other instrument and partly reserved as aforesaid, without fraud or collusion, and that at the time of the application to the said clerk of enrolments possession or enjoyment is held under such deed, assurance, or other instrument, and that the omission to enrol the same in proper time has arisen from ignorance or inadvertence, or from the destruction thereof by time or accident, it shall be lawful for the said clerk of enrolments to enrol the deed, assurance, or instrument to which the application relates, or such a subsequent deed as in the said Act mentioned, as the case may be, and the same shall thereupon be enrolled accordingly, and such enrolment shall be as valid and effective for all purposes as if the same had been made under the authority of the said last-mentioned Act. Over and above the ordinary fee payable upon the enrolment of any deed, assurance, or other instrument, there shall be paid upon the enrolment under this section of any deed, assurance, or other instrument, the further fee of ten shillings (a).

(a) This section is repealed by the Mortm. and Charit. Uses Act, 1888, ante. See further, ante, pp. 421 et seq.

Definition of terms "public charitable purposes," "trustees."

14. The words "public charitable purposes" shall mean all such charitable purposes as come within the meaning, purview, or interpretation of the statute of the forty-third year of Queen Elizabeth, chapter four(a), or as to which, or the administration of the revenues or property applicable to which, the Court of Chancery has or may exercise jurisdiction(b); and the word "trustees" shall include the governors, managers, or

other persons having the conduct or management of any Sect. 14.
charity.

(a) See Chap. I., *ante*.

(b) See *ante*, pp. 88 *et seq.*

15. This Act may be cited for all purposes as “The Short title.
Charitable Trustees Incorporation Act, 1872.”

SCHEDULE.

The objects of the charity and the rules and regulations of the same, together with the date of and parties to every deed, will, or other instrument, if any, creating, constituting, or regulating the same.

A statement and short description of the property, real and personal, which at the date of the application is possessed by or belonging to or held on behalf of such charity.

The names, residences, and additions of the trustees of such charity.

The proposed title of the corporation, of which title the words “trustees” or “governors” and “registered” shall form part.

The proposed device of the common seal, which shall in all cases bear the name of incorporation.

The regulations for the custody and use of the common seal.

THE PRISON CHARITIES ACT, 1882.

45 & 46 VICT. c. 65.

An Act to make provision respecting certain Prison Charities.
[18th August, 1882.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Prison Charities Act, 1882.

Power of
Charity
Commis-
sioners, on
application
of Secretary
of State, to
make scheme
respecting
prison
charities.

2. Where the Charity Commissioners for England and Wales (in this Act referred to as the Charity Commissioners) would have power to make an order for the establishment of a scheme for the administration of a prison charity as hereinafter defined, if application for such scheme were made by the trustees or persons acting in the administration of the charity (*a*), such Commissioners shall also have power to make a like order upon the application of one of her Majesty's principal Secretaries of State in like manner as if he were the said trustees, and the Charitable Trusts Acts, 1853 to 1869, shall apply accordingly.

16 & 17 Vict.
c. 137, &c.

Provided that nothing in this Act shall authorize the making of a scheme upon the application of the Secretary of State in a case where the prison charity is applied for other purposes in pursuance of any special Act of Parliament (*b*).

For the purposes of this Act the expression "prison

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charity" means a charity the endowment of which is applicable for the benefit of any prisoners, or for any purpose connected with any prisoners or prison, whether the prisoners be confined in or the prison be a common gaol, house of correction, or other place of confinement, and where the endowment of a charity is partly applicable for the purposes aforesaid and partly for other purposes, so much of the endowment as appears to the Charity Commissioners to be applicable for the aforesaid purposes shall be deemed to be a prison charity within the meaning of this Act.

(a) See Charit. Trusts Act, 1860, s. 2, *ante*.

This Act creates no new jurisdiction. The Charity Commissioners have **Effect of Act.** always had the same power to make schemes for prison charities as for all other charities. The effect of the present Act is merely to enable the Home Secretary to put the commissioners in motion. It does not, however, deprive the trustees of a prison charity of the right previously possessed by them to apply to the commissioners for a scheme. See further, *ante*, p. 459.

(b) The Queen's Prison Discontinuance Act, 1862 (25 & 26 Vict. c. 104), provided by sect. 13 that all charitable gifts and bequests applicable to the relief of the poor debtors or other prisoners in the Queen's Prison should be applied for the relief of discharged or other prisoners in England in such manner as might be settled by a judge of the Court of Chancery.

THE ALLOTMENTS EXTENSION ACT, 1882.

44 & 45 VICT. c. 80.

An Act for the Extension of Allotments.

[18th August, 1882.]

WHEREAS by an Act 2 William IV. cap. 42, the trustees of lands allotted under Inclosure Acts or otherwise appropriated for the benefit of the poor of any parish, together with the churchwardens and overseers of the poor in parish vestry assembled, are required to let portions of such lands in quantities of not more than one statute acre to any one individual, according to their discretion, as a yearly occupation from Michaelmas to Michaelmas, and at such rent as land of the same quality is usually let for in the said parish, to industrious cottagers of good character, being day labourers or journeymen legally settled in the said parish, or dwelling within or near its bounds:

And whereas the provisions of the said Act, from its limited application and other causes, have been only partially carried out:

And whereas it is expedient that having regard to the present poor law, the benefit thereof should be extended to all the irremovable poor, and that the same should be extended to all lands, whether cultivated or uncultivated, held for the benefit of the poor as hereinafter described, and that a summary remedy should be afforded (a):

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this

present Parliament assembled, and by the authority of the same, as follows:

(a) The Act 2 Will. IV. c. 42, as stated in this preamble, only enables allotments to be made to "industrious cottagers of good character, being day labourers or journeymen legally settled in the said parish, or dwelling within or near its bounds." The Act will be found in App. I. to this Book, *post*. 2 Will. IV. c. 42.

The Poor Allotments Management Act, 1873 (36 & 37 Vict. c. 19), relates only to lands allotted for the benefit of the poor under Inclosure Acts passed previously to 8 & 9 Vict. c. 118, in the Act called Local Inclosure Acts. It was designed to meet cases where the number of allotment wardens, trustees or other functionaries, was larger than was convenient for the management of allotments. It accordingly provides for the annual appointment of committees of not more than twelve, or less than six, members of their own body by (1) allotment trustees, (2) the vestry of any parish empowered to make an order in respect of poor allotments under 2 Will. IV. c. 42, when the allotment trustees, or persons entitled to attend the vestry respectively, exceed twenty: sect. 2. It was provided by sect. 16 that nothing in the Act should affect a scheme made by the Charity Commissioners under the Charit. Trusts Acts. The Act will be found in App. I. to this Book, *post*. Poor Allotments Management Act, 1873.

The present Act was passed, as stated in the preamble, for the purpose of extending the benefit of 2 Will. IV. c. 42 to all the irremovable poor, its main object being to provide for the letting in allotments of land held in trust for dole charities. It applies to all allotments within 2 Will. IV. c. 42, whether within the Poor Allotments Management Act, 1873, or not. Object of present Act.

This Act has given rise to considerable difficulties. Some of them are mentioned in the notes to the particular sections under which they arise: see n. (a) to sect. 9, and n. (a) to sect. 11, *post*. Others, and also the suggestions which have been made with regard to further legislation, will be found *ante*, pp. 460, 461. Difficulties in working Act.

Sect. 13, sub-s. (2), of the Allotments Act, 1887 (50 & 51 Vict. c. 48), empowers trustees, with the sanction of the Charity Commissioners, to sell or let land applicable for allotments under this Act to the sanitary authority. The section is printed *post*, p. 697. Allotments Act, 1887.

1. In this Act "trustees" shall mean trustees, feoffees, and managers, whether corporate or sole, or a committee of the same in such cases as are provided for in the Poor Allotments Management Act, 1873. Interpretation.
36 & 37 Vict. c. 19.

2. This Act may be cited as the Allotments Extension Act, 1882. Short title.

3. This Act shall not apply to Scotland or Ireland. Extent of Act.

4. All trustees in whom lands are vested or by whom the same are held or managed for the benefit of the poor of any parish or place in or adjoining to that in which Trustees of lands vested for benefit of the poor to give notice as to letting (e).

Sect. 4.

such lands are situate, and whereof the rents or produce are distributed in gifts of money, doles, fuel, clothing, bread, or other articles of sustenance or necessity (*b*), shall, where such lands are not otherwise used for the benefit of the parish in which it is situate as a recreation ground, or otherwise for the enjoyment or general benefit of the inhabitants, take proceedings, subject as hereinafter mentioned, for letting such lands in allotments to cottagers, labourers, and others (*c*), and—

- (1.) They shall set apart for the purpose of this Act such field or other portion of the said lands as is most suitable, as regards distance and otherwise, for allotments, and give public notice, in manner directed by the schedule to this Act, of the field or portion so set apart, specifying the situation and extent thereof, and the rent per acre or rod which they are ready to accept for the same when let in allotments, and the times and places at which applications for allotments are to be made:
- (2.) If any applications for an allotment are received within the time fixed by the notice the trustees shall forthwith proceed to obtain possession of the field or portion set apart, or of so much thereof as is required for the applications, and to fence the same (if necessary), and to let the same in manner provided by this Act (*d*):
- (3.) If the whole of the field or portion so set apart is let in allotments the trustees shall proceed as soon as they have power so to do to set apart another field or portion of their lands for the purpose of this Act, and give public notice thereof as directed by this section, and so on until the whole of their lands are let in allotments, or no applications are received for further allotments:

Provided that—

- (a.) If application is made within the time aforesaid

Sect. 4.

- for part only of the field or portion so set apart, the remainder thereof may be let as provided by this Act in the case of unlet allotments (e), and
- (b.) It shall not be necessary for the trustees to set apart any portion of any such lands as aforesaid, the separation of which from the remainder of such lands not set apart for the time being may make it impossible to let such remainder without substantial loss to the charity, when the whole of such lands cannot conveniently be set apart for allotments; and they shall have the same powers of letting any remainder of such lands, not set apart for the time being, as if this Act had not passed; and
- (c.) If no application is made within the time aforesaid for any part of the field or portion so set apart, the like public notice as is required in the first instance shall be given by the trustees once in every succeeding year; and
- (d.) Where the said lands are at any time held on lease, the trustees shall proceed to act in pursuance of this Act upon the expiration of such lease, and this Act shall apply as if such expiration were the passing of this Act.

(a) This Act does not interfere with the power of authorizing a sale of charity lands possessed by the Charity Commissioners under the Charit. Trusts Acts: *Parish of Sutton to Church*, 26 Ch. D. 173.

The language of this section is wide enough to include land allotted under a Local Inclosure Act in lieu of rights of cutting fuel, even though such land is not within 2 Will. IV. c. 42: *ibid.*

(b) These words must probably be confined to gifts in the nature of doles, which are precarious and uncertain. They would not, it is conceived, apply to permanent forms of relief, such as the stipends of almspeople, or pensions, which are free from the mischievous incidents attaching to doles.

(c) See note (a) to sect. 3, *ante*.

(d) Sect. 13, *post*.

(e) *Ibid.* sub-s. (6).

5. If any of the said lands shall be found to lie at an inconvenient distance from the residences of any cottagers or labourers it shall be lawful for the trustees to

Power to let lands inconveniently situated (a).

Sect. 5. let such lands, or any part thereof, for the best rent that can be procured for the same, and to hire in lieu thereof, for the purposes of this Act, other land more favourably situated for allotments to the poor of the parish or place for whose benefit such lands are held in trust.

Suggested extension of section.

(a) It was suggested by the Select Committee of 1884 on the Charit. Trusts Act, in the separate report which they published with regard to this Act (see *ante*, p. 460), that this section should be extended to the case of lands which it is desirable to exempt for other reasons than distance, as where the letting of land in allotments would greatly diminish its value (in the case, for instance, of breaking up old pasture land), and that the Charity Commissioners should be empowered to make their certificate of exemption under sect. 11 (see note (a) to that section, *post*) conditional on the trustees taking steps to hire land in substitution.

Saving old rights.

6. Neither this Act nor section twelve (a) of the Poor Allotments Management Act, 1873, shall extend or be applicable to any lands with regard to which the provisions of the second William the Fourth, chapter forty-two, have been put into operation; but all industrious cottagers of good character, being day labourers or journeymen, whether legally settled in any parish in which the said Act of second William the Fourth, chapter forty-two, has been put into operation, or dwelling within its bounds or those of the adjoining parishes, or being poor persons in any such parishes, shall at all times be entitled to and enjoy the benefits, rights, and privileges created and conferred by the second William the Fourth, chapter forty-two, in as full and ample a manner as they would have been entitled to and have enjoyed the same if they had been legally settled in the parish and this Act and section twelve of the Poor Allotments Management Act, 1873, had not been passed.

(a) This section provides that, notwithstanding anything in 2 Will. IV. c. 42, it shall be lawful for the authority executing the powers of that Act and of the Poor Allotments Management Act, 1873, to require the rent of any land let under it to be paid for the whole year in advance. The Act is printed in App. I. to this Book, *post*.

Preference to cottagers living in parishes where the lands are situate.

7. The provisions of this Act shall apply to lands held for the benefit of the poor of any parish or place situated in or adjoining to the same parish in which such poor dwell; but where the said lands are situated in or

adjoining to several parishes, preference shall be given to the cottagers and labourers being inhabitants of the parish or place for the benefit of the poor of which lands are so held. Sect. 7.

8. Where any lands shall be held as aforesaid (a), partly for the benefit of the poor, and partly for other objects, the provisions of the Act shall apply to such a proportion of the entire quantity of the said lands as the amount of the gross income applicable to the poor shall bear to the entire gross income thereof; and in case of difference as to the amount of such gross income, or as to the said proportion, the difference shall be referred to the Charity Commissioners for England and Wales, in this Act referred to as the Charity Commissioners, whose decision shall be final.

Where lands are held partly for benefit of poor.

(a) Sect. 4, *ante*.

9. The trustees or the majority of them may from time to time make and, when made, revoke and vary such rules as may be necessary for the appointment and powers of local managers of allotments under this Act, whether as tenants or agents of the trustees or otherwise, and for preventing the same being built upon or sublet, and preventing any undue preference in such letting, and all other necessary rules, and for giving effect to the provisions of the Act; and such rules as are for the time being in force under this section shall be binding on all persons and corporations whatsoever.

Charity Commissioners to settle rules in certain cases.

Provided that—

(a) A copy of all rules made under this section shall be sent to the Charity Commissioners as soon as may be after they are made, and the Charity Commissioners may, if they think fit, by order disallow any rules made under this section, and upon such disallowance the same shall be void (a):

(b) Such public notice as is provided by the schedule to this Act shall be given of all rules in force

Sect. 9.

under this section, and a copy thereof shall be at all times given gratis to any cottager or labourer demanding the same: .

- (c) Any four cottagers or labourers, or any of the trustees, if aggrieved by any such rules, whether in respect of anything contained therein, or of any omission therefrom, or if aggrieved by the want of any rules, may complain to the Charity Commissioners, and the Charity Commissioners, if they think such complaint is well grounded, may make such order as appears to them necessary to remedy the complaint. Any such order may rescind or alter any such rules, and may make any rules for the purposes of this section, and such rules shall be duly observed by all persons and corporations whatsoever.

(a) The rules which are submitted to the commissioners under this section vary so greatly that it is impossible to lay down any principle which will furnish a general guide as to what rules will be allowed by them, and what will be disallowed. The following, however, are some of the points which most frequently arise:—

**Payment of
rent in
advance.**

Sect. 12 of the Poor Allotments Management Act, 1873 (see note (a) to sect. 6 of this Act, *ante*), expressly authorizes rent, under 2 Will. IV. c. 42, and that Act, to be required in advance. The present Act contains no such provision. It is conceived, however, that the terms of the present section, and of sect. 4, *ante*, are sufficiently wide to allow the trustees discretion to determine (subject to the control of the Charity Commissioners) how and when they will require the rent of allotments to be paid.

Following, however, a recommendation made by the Select Committee of 1884 in their separate report on this Act (see *ante*, p. 460), the commissioners now disallow rules prescribing the payment in advance of more than a quarter's rent.

**Sub-letting.
Character of
applicants.**

The Charity Commissioners also allow rules forbidding the sub-letting of allotments; this, indeed, is impliedly sanctioned by the present section, and the commissioners would seem to have no discretion. Rules providing that the character of applicants shall be taken into account in determining the choice of tenants are disallowed, the Charity Commissioners being of opinion that a comparison of the preamble to the Act with sect. 4 shows that the legislature has not left the trustees any discretion as to the individual allottees, but intended that every cottager and labouring man should have the right to claim an allotment.

**In case of
neglect of
trustees to
publish
notice.**

10. If the trustees of any such lands shall omit, neglect, or refuse to give such public notice or to proceed for such setting apart of land as is required by this Act,

Sect. 10.

or otherwise to comply with the provisions of this Act, any of the said cottagers or labourers, not being less than four, who would be entitled to rent any allotment out of the said lands under the provisions of this Act if the same had been duly observed shall be entitled, after due notice to such trustees requiring them to remedy the omission, neglect, or refusal specified in the notice, to apply to the Charity Commissioners, and the said Commissioners shall inquire into the complaint, and, if satisfied that such omission, neglect, or refusal exists, and requires to be remedied, may issue their order for remedying, in manner specified therein, such omission, neglect, or refusal, and such order may be enforced in like manner as an order made by the Commissioners under the Charitable Trusts Acts (*a*).

(*a*) Charit. Trusts Act, 1853, s. 14; Charit. Trusts Amend. Act, 1855, s. 9, and Charit. Trusts Act, 1860, s. 20, *ante*.

11. If in the opinion of the trustees such lands as aforesaid shall, either on the ground of distance or on any other ground, be so unsuitable for allotments that no part thereof can be usefully set apart for the purposes of this Act, they shall be at liberty to apply to the Charity Commissioners for a certificate to that effect: and if such certificate be granted they shall not be bound to set apart under this Act any part of the lands to which the same shall apply: and they shall annually give public notice of such certificate so long as the same shall remain in force in the manner directed by the schedule to this Act. Provided always, that it shall be lawful for the said Commissioners at any time, for any cause shown to their satisfaction by any person entitled to make an application to them under this Act, to revoke such certificate: Provided also that every certificate given by the Charity Commissioners under this section, unless and until revoked by them, shall be final and conclusive (*a*).

Certificate of
Charity Com-
missioners
sufficient
defence for
trustees.

(*a*) In granting certificates of exemption under this section the question has arisen whether the interests of the recipients of the charity, the lands of charity.

Sect. 11
(a).

which are subject to be let in allotments, or the interests of the allottees, shall prevail, where the two are brought into conflict. There is no indication in the Act which principle the legislature intended to be acted upon.

The Charity Commissioners have held, that where certain permanent injury to the charity would result from the letting in allotments, as where it would involve the breaking up of old pasture land, a certificate of exemption should be granted. Where, on the other hand, the risk of injury has appeared remote, they have refused the exemption: see 31st Rep. of Charity Commissioners, pp. 15, 16, and 32nd Rep. p. 11. This view was upheld by the Select Committee of 1884, who reported that there was nothing in the Act to relieve the trustees or the Charity Commissioners from their *primâ facie* duty to have regard to the interest of the charity.

The words "unsuitable . . . on the ground of distance, or on any other ground," are clearly wide enough to allow deterioration in value to be taken as a ground for granting exemption.

Arrears of
rent, and
in case of
refusal of
tenant to
quit.

8 & 9 Vict.
c. 118.

12. Any rent for any allotment let in pursuance of this Act, and the possession of such allotment in the case of any notice to quit, or other failure to deliver up possession of the same as required by law, may be recovered in all respects as if the same were an allotment under the Inclosure Act, 1845 (a), and the Acts amending the same, and sections one hundred and ten and one hundred and eleven (b) of the Inclosure Act, 1845, shall apply as if they were herein enacted, and as if the trustees, or in the case of the appointment of local managers, such managers, were the allotment wardens within the meaning of the said sections.

(a) This Act and the amending Acts are incorporated only so far as relates to the recovery of rent and the recovery of possession in case of refusal to quit. It has been suggested that the first sentence of this section may be read as ending at the words "Inclosure Act, 1845," in which case the amending Acts and sects. 110 and 111 of the Inclosure Act, 1845, would all be incorporated. It seems clear, however, that this construction cannot be supported.

(b) These sections are as follows:—

Recovery of
gardens on
nonpayment
of rent, &c.

Sect. 110. And be it enacted, that if the rent reserved upon the letting of any garden by the allotment wardens shall at any time be in arrear for forty days, or if at any time during the tenancy, being not less than three calendar months after the commencement thereof, it shall appear to the allotment wardens that the occupier of such garden shall not have duly observed the terms and conditions of his tenancy, or shall have gone to reside more than one mile out of the parish, then and in every such case the allotment wardens shall serve a notice upon such occupier, or in case he shall have gone to reside out of the parish shall affix the same to the door of the church of the parish, determining the tenancy at the expiration of one month after such

notice shall have been so served or affixed, and thereupon such tenancy shall be determined accordingly: Provided always, that in every such case the allotment wardens or their incoming tenant shall pay to the occupier whose tenancy shall have been so determined a fair recompense in money for any crops (not being crops prohibited by the terms of such tenancy) which may be growing on such garden at the time of such determination, and for any manure left on such garden, or any benefit accruing from the manuring of such garden to the wardens or their incoming tenant; and the justices to whom application may be made for a warrant to give possession of such garden shall settle the amount of such recompense, in case the parties differ about the same, and stay the execution of such warrant until the same shall have been paid or tendered, or (in case such occupier be absent) until the payment thereof shall have been secured to the satisfaction of such justices.

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(b).

Sect. 111. And be it enacted, that in case upon the determination of any such tenancy as aforesaid the occupier of any such garden shall refuse to quit and deliver up possession thereof, or if any other person shall unlawfully enter upon, take, or hold possession of any such garden, or of any part of such allotment, the allotment wardens may recover possession according to the mode prescribed by an Act passed in the second year of the reign of her Majesty Queen Victoria, intituled "An Act to facilitate the Recovery of Possession of Tenements after due Determination of the Tenancy," in such and the same manner as if the said wardens were landlords or a landlord, and as if such over-holding occupier, or other person were a tenant neglecting or refusing to quit and deliver up possession within the meaning of the last-mentioned Act.

Possession,
how to be
recovered
from tenant
holding over.

1 & 2 Vict.
c. 74.

13. With respect to the letting of allotments in any field or portion of land set apart for the purposes of this Act the following provisions shall have effect: Letting of allotments.

- (1.) Public notice of the intention to let the same shall be given in manner directed in the schedule to this Act:
- (2.) Every allotment shall be let free of all charges (that is to say), tithe, tithe rentcharge, rates, taxes, and outgoings whatsoever, and shall be let at such rent as land of the same quality is usually let for in the same parish, with such addition as is necessary to satisfy the said charges; and in this section the expression "outgoings" includes the expense of getting possession, and allotting, dividing, and fencing the field or portion of land set apart, and collecting the rents, and any sum payable for such draining of the allotments and means

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of approach to the allotments as may be necessary :

- (3.) The trustees shall, for the purposes of all rates, taxes, tithes, and tithe rentcharge, be deemed to be the occupiers of the allotments :
- (4.) One person shall not hold any allotment or allotments exceeding one acre (*a*) :
- (5.) No building whatever shall be erected for or used as a dwelling or workshop on any part of any allotment, and if any building is so erected or used the trustees shall forthwith pull down the same and sell and dispose of the materials thereof, and the proceeds of the sale shall be applicable in like manner as the rent of the allotment (*b*) :
- (6.) If at any time the trustees are unable to let any allotment or any portion thereof, they may let the same, or such portion thereof as may be unlet, to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable them to resume possession thereof within a period not exceeding twelve months if it should at any time be required to be let for allotments ; but such letting shall not be deemed to exonerate the trustees from giving public notice under the foregoing provisions of this section (*c*).

Size of
allotments.

(*a*) This sub-section fixes an acre as the maximum quantity of land which may be allotted to an individual, but there is nothing here or elsewhere in the Act to compel trustees to allot that amount. It has been contended that the intention of the legislature was that each allottee should have an acre if there was sufficient land for the purpose. But there is nothing in the Act to support this view : see Rep. of Select Committee of 1884, p. v.

Subject to any rules which may be made under sect. 9, to which the sanction of the Charity Commissioners is required, the Act leaves to the trustees a discretion as to the size of allotments, presumably to be regulated according to the quantity of land to be allotted (see clause 3 of the Schedule, *post*) and the number of applicants.

(*b*) The rules to be made under sect. 9 must provide for this.

(c) The provisions of this sub-section have been found to be unworkable, it being impossible to let land for cultivation profitably upon such terms: see Rep. of Select Committee of 1884, p. v.

Sect. 13
(c).

14. Where a scheme is made by the Charity Commissioners (a) after the passing of this Act (b) in relation to any charity, and part of the endowment of such charity consists of land other than buildings and the appurtenances of buildings, the Charity Commissioners shall insert in such scheme a provision authorising the trustees of the charity to set apart portions of the said lands for allotments, and the same may be set apart and let as allotments in like manner as is directed by this Act (c).

Provision for allotments in scheme of Charity Commissioners.

(a) *I.e.*, under their ordinary jurisdiction: Charit. Trusts Act, 1860, s. 2, *ante*.

(b) 18th August, 1882.

(c) The form of clause inserted in pursuance of this section will be found in App. II. to this Book, Scheme No. I. clause 36.

15. Nothing in this Act contained shall be taken to impair or alter any powers conferred on the trustees of any charities or the Charity Commissioners by the Endowed Schools Acts or the Acts amending the same (a).

Act not to impair powers conferred by Endowed Schools Acts.

(a) No inference can be drawn from this section that powers conferred upon the Charity Commissioners by the Charit. Trusts Acts or other Acts (not being the End. Schools Acts) are intended to be taken away: *Parish of Sutton to Church*, 26 Ch. D. at p. 179.

SCHEDULE.

Regulations as to Public Notices and Lettings.

1. Public notice, for the purposes of this Act, shall be given by fixing the notice on the doors of the church of the parish in which the land referred to in the notice is situate, and if there is no church, then on some public building or conspicuous place therein.

2. Public notice of the setting apart under this Act of a field or portion of land shall be given in the month of February, or such other month as the trustees may fix, and the first notice shall be given in the said month next after the passing of this Act, and if not so given shall be given as soon as may be afterwards, at such time as may be fixed by the trustees, or, in case of their default, by the County Court judge for the district in which the land is situate, or by the Charity Commissioners.

Schedule.*Letting.*

3. The public notice of the intention to let an allotment out of land when set apart shall specify the amount of land to be let, and the rent per acre or rod to be paid, and the place and time at which applications are to be made, and shall be given annually in the month of June, or in such other month as may be fixed by, or in pursuance of, rules under this Act: Provided that in any year in which there will be no allotment vacant out of land already set apart, it shall not be necessary to give such notice.

4. The first public notice of the intention to let an allotment shall be given in the month of June next after the trustees obtain possession of the allotment, or at such other time, not more than one month later, as may be fixed by or in pursuance of rules under this Act; and, if not so given, shall be given at such time as may be fixed by the County Court judge for the district in which the land is situate, or by the Charity Commissioners.

5. The time for applications for allotments out of land when already set apart shall be the month of August, or such other month as may be fixed by or in pursuance of rules under this Act.

6. The allotments shall be let to persons in the order in which they apply, or in accordance with such other order as may be provided by rules under this Act, so that there shall be no undue preference shown as regards the persons to whom they are let.

7. Each allotment shall be let on a yearly tenancy beginning at Michaelmas day, or at such other day as may be fixed by or in pursuance of rules under this Act.

ALLOTMENTS ACT, 1887.

50 & 51 VICT. c. 48.

An Act to facilitate the provision of Allotments for the Labouring Classes. [16th September, 1887.]

[This Act enables the urban and rural sanitary authorities to provide allotments and common pastures for labourers, and gives them compulsory powers of acquiring land for that purpose.]

13.—(1.) The allotment wardens under the Inclosure Act, 1845 (*a*), and the Acts amending the same, having the management of any land appropriated under the said Acts either before or after the passing of this Act for allotments or field gardens for the labouring poor of any place, may by agreement with any sanitary authority within whose district such place is wholly or partly situate, transfer the management of such land to the sanitary authority, upon such terms and conditions as may be agreed upon with the sanction, as regards the said allotment wardens, of the Land Commissioners for England, and thereupon such land shall vest in the sanitary authority.

Power for allotment wardens or allotment trustees to transfer to sanitary authority. 8 & 9 Vict. c. 119.

(2.) All trustees within the meaning of the Allotments Extension Act, 1882, required or authorized by that or any other Act to let lands in allotments to cottagers, labourers, journeymen, or others in any place may, if they think fit, in lieu of letting such land in manner provided by the said Acts, sell or let such land to the sanitary authority of the district in which such place is wholly or partly situate, upon such terms as may be agreed upon, with the sanction, as regards the said trustees, of the Charity Commissioners for England and Wales.

45 & 46 Vict. c. 80.

(3.) The provisions of this Act shall apply to land vested in the sanitary authority under this section, in like manner as if it had been acquired by the sanitary authority under the general powers of this Act.

(*a*) See note (*a*) to sect. 3 of the Allotments Extension Act, 1882, *ante*.

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sign manual, appoint any number of persons, not exceeding two (*a*), to be paid Charity Commissioners for England and Wales, who shall hold office during her Majesty's pleasure, and their salaries shall, unless otherwise directed by Parliament, cease to be paid after the expiration of the period prescribed by this Act (*b*) for the duration of the powers and duties vested in or imposed upon the Charity Commissioners for England and Wales by this Act.

Save as in this section mentioned, the additional Commissioners shall have the same powers, and perform the same duties, and stand in all respects in the same position as the other paid Charity Commissioners, with the exception of the Chief Commissioner.

The Commissioners of her Majesty's Treasury may allow the Charity Commissioners to employ such number of assistant commissioners, clerks, architects, actuaries, surveyors, and other officers as the Commissioners of her Majesty's Treasury may think necessary for the purpose of enabling the Charity Commissioners to perform the additional duties imposed upon them by this Act.

(*a*) Two additional commissioners were appointed under this section.

(*b*) See next section.

Duration of
powers of
Commis-
sioners.

4. The powers of the Commissioners conferred by this Act shall continue until the end of the year one thousand eight hundred and eighty-seven, but it shall be lawful for her Majesty the Queen from time to time, with the advice of her Privy Council, to continue the powers of the Commissioners for such time as her Majesty thinks fit, but not beyond the end of the year one thousand eight hundred and eighty-nine (*a*).

(*a*) By an Order in Council made on the 12th of July, 1887, these powers were continued till the 31st December, 1889.

II.—*Inquiry and Statement.*

Commis-
sioners to
inquire into

5. The Commissioners shall as soon as may be proceed to inquire into the nature, tenure, and value of all the

property and endowments (*b*) belonging to the charities mentioned in the Digest of Parochial Charities of the City of London, referred to in the Thirteenth Report of the Charity Commissioners for England and Wales (*c*), and every of them, and every other charity the property or income of which is applicable or applied to or for the benefit of any parish (*d*) or part of a parish within the City of London or of any inhabitant or inhabitants thereof (hereinafter called the said parochial charities), and the purposes or trusts for or upon which the same have heretofore been or are now held or enjoyed and to which the income thereof has been or is now applied, and shall classify the said property in two schedules. They shall place in one of such schedules all property (hereinafter called "ecclesiastical charity property") which shall be proved to their satisfaction to have been originally given to or for, or to have been duly ordered by any Act of Parliament, judgment of a Court, or other authority competent in that behalf, to be applied to or for, and to have been accordingly applied to or for any spiritual purpose which is now a legal purpose, or for the benefit of any spiritual person as such (*d*), or for the erection, maintenance, or repair of any ecclesiastical buildings, or for the maintenance of divine service therein, even although such purpose may now have failed, but the user of property for an ecclesiastical or any other purpose shall not be conclusive evidence that such property was originally given for such a purpose, but shall be taken into account by the Commissioners in determining whether in each case such property is or is not to be deemed to have been originally given for such a purpose, provided that no property shall be deemed to be ecclesiastical which shall not have been given or applied to or for or in connexion with the Church of England. In the other of such schedules they shall place all other charity property (hereinafter called "general charity property"). The Commissioners shall specify in the said schedules the objects or purposes to or for which the said property is

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the charity property, and classify same in two schedules, one of ecclesiastical and the other of general charity property (*a*).

Sect. 5. now applied, and all vested interests now existing in or upon or in anywise affecting any part of such property.

(a) Under sect. 2, sub-s. (3), the commissioners have power to determine whether any property is or is not charity property subject to the powers of this Act. As to what is charity property, see note (c) to that section, *ante*.

(b) Defined by sect. 53 of this Act, *post*.

(c) See *ante*, p. 461.

(d) See *Re St. Alphage, London Wall*, 59 L. T. N. S. 614, and cases cited in n. (c) to sect. 2, *ante*.

These words are not confined to property producing income. An advowson vested in trustees for the benefit of a parish, and a vicarage held upon the same trusts are charity property within the meaning of the Act: *Re St. Stephen, Coleman Street*, 39 Ch. D. 492. See also note (c) to sect. 2 of this Act, *ante*.

Where property is mixed, Commissioners to apportion ecclesiastical and general.

6. Where property scheduled by the Commissioners as ecclesiastical (a) has been mixed with property scheduled by them as general charity property, or where the income of any property is considered by them to be partly ecclesiastical and partly general, the Commissioners shall determine and state how much of such property or income, as the case may be, shall be taken to be ecclesiastical, and how much of the same shall be taken to be general.

(a) See the last section.

As to vested interests and equitable claims (a).

7. No person (b) shall be deemed to have any vested interest within the meaning of this Act if the office which he may hold or the emolument which he may receive shall be one tenable or receivable at the pleasure of some other person or persons, but the Commissioners shall consider and may declare what person or persons have, in their opinion, owing to the circumstances of the position of such person or persons, or generally on moral grounds, any fair or equitable claim to continue to receive any emolument now received by him or them out of any endowment.

Vested interest.

(a) A vested interest means some emolument received by a person for his own benefit in respect of some office which he holds: *Re St. John the Evangelist*, 59 L. T. N. S. 617. There is no vested interest in a charity fund which

the trustees are bound to expend in repairing a church, still less where the fund is not properly applicable to the repair of the church at all: *ibid.*

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(a), (b).

Similarly, there is no vested interest where the property is held for the benefit of the poor of the parish: *Re St. Alphage, London Wall*, 59 L. T. N. S. 614.

An officer of a charity who has no freehold in his office, but is subject to dismissal at any time upon proper notice, has not a vested interest: *Re Parish of St. Edmund the King and Martyr*, 60 L. T. N. S. 622.

Thus a person appointed by the trustees of a charity, regulated by a scheme, to be clerk and solicitor to the charity, no such office being contemplated by the scheme, and the trustees having no power, even if they wished, to create a freehold office of that kind, was held not to have a vested interest: *ibid.*

An annual payment which the rector of a parish is entitled to receive out of a charity fund, would constitute a vested interest: *Re St. John the Evangelist*, 59 L. T. N. S. 617.

See also sect. 10, *post*.

(b) "Person" includes body of persons whether corporate or not: sect. 53, *post*.

8. The Commissioners shall in such form as they may think most convenient print and publish a statement or successive statements containing the findings and determinations at which they shall have arrived in the course of the inquiry aforesaid (b).

Commissioners to publish result of inquiry (a).

(a) The statements required by this section have all been published with the exception of one supplemental one, which will be published shortly: see the 36th Report of the Charity Commissioners, p. 35.

(b) See sect. 5, *ante*.

9. The Commissioners shall send a copy of every such statement to the governing body (a) of every endowment (a) affected by such statement, and also to the vestry clerk of every parish in which any endowment affected by such statement is applicable, and also to the Remembrancer of the City of London.

Commissioners to send copy of statement to governing bodies, &c.

(a) Defined by sect. 53, *post*.

10. Any person claiming any vested interest (a) affecting any endowment mentioned in any such statement, and alleging that the Commissioners have not duly recognised such vested interest, or any person or persons alleging that any property which the Commissioners

Person claiming vested interest not recognised by Commissioners or denying existence of charitable

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trust may
apply to
High Court
of Justice.

have determined to be charity property within the meaning of this Act (*b*) is not charity property, but that he or they is or are entitled to the same free from any charitable trust affecting the same, may within two months from the date of the publication of such statement apply to the High Court of Justice, by petition or summons at chambers, asking for a declaration that he has a vested interest affecting such endowment or that such property is not charity property (as the case may be). The Commissioners may appear upon any such proceedings, and the decision of the judge before whom such petition or summons is heard shall be final (unless special leave to appeal shall be by him given). The judge shall make a declaration in conformity with the justice of the case, and shall have power to order that the costs of the application shall be paid out of the endowment or property in question or by any party to the application as he may think right (*c*). Whenever necessary the Commissioners shall amend their statement so as to make it conform to the judge's declaration.

(*a*) See sect. 7, *ante*, and note (*a*) thereto.

(*b*) See sect 2, sub-s. (3), *ante*, and note (*c*) thereto.

(*c*) The Court is unwilling to allow the costs of these petitions out of the charity funds: *Re St. Stephen, Coleman Street*, 39 Ch. D. 492.

Nor, it seems, will it readily give leave to appeal: *ibid*.

III.—*Schemes for better application of Charity Funds.*

Commis-
sioners to
frame schemes
for charity
property.

11. The Commissioners shall, as soon as may be after the publication of the statement or statements afore-said (*a*), proceed to prepare a scheme or schemes for the future application and management of the charity property and endowments so classified by them as herein-before directed (*b*).

(*a*) See sect. 8, *ante*.

(*b*) Sect. 5, *ante*.

Provisions to
be inserted in
all schemes.

12. In every such scheme the Commissioners shall provide for the following objects; that is to say,

(*a*) For the vesting in the Official Trustee of Charity

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Lands appointed under the Charitable Trusts Acts, 1853 to 1869 (*a*), of all real property and chattels real belonging to the charity or charities dealt with in the scheme, and for the vesting in the Official Trustees of Charitable Funds appointed under the last-mentioned Acts (*b*) of all personal property belonging to the charity or charities dealt with in the scheme, upon trust to hold the same real and personal property respectively as in the said Acts and hereinafter provided, but subject to all quit-rents, leases, tenancies, equities, reservations, charges, and all other incumbrances and liabilities affecting the same:

- (b) For carrying over to a separate account a sum of money out of the charity property and endowments dealt with by the scheme to answer and provide for the expenses incurred by the Commissioners in carrying out this Act (*c*):
- (c) For saving the vested interest (*d*) of or making due compensation to every person whom the Commissioners may have declared entitled to any vested interest which may be prejudiced by the scheme, and for making compensation to any person whom the Commissioners may have considered as aforesaid (*d*) to have a fair or equitable claim to any emolument taken away by the scheme.

(a) See Charit. Trusts Act, 1853, s. 48, and Charit. Trusts Amend. Act, 1855, s. 15, *ante*.

(b) See Charit. Trusts Act, 1853, s. 51, *ante*.

(c) See sect. 44, *post*.

(d) See sect. 7, *ante*.

13. In every scheme relating to the charity property or endowments belonging to or now applicable in the parishes enumerated in the First Schedule to this Act, the Commissioners shall, subject to the carrying over and to the provision for saving or making compensation

Provisions to be inserted in schemes relating to parishes in First Schedule.

Sect. 13. hereinbefore contained (a), provide for the following objects; that is to say,

(a.) For the application of the property scheduled as ecclesiastical charity property (b), or any part of the income thereof, to the maintenance of the fabric and the services of the church, or to such other of the ecclesiastical purposes to which the same is now applied as are, in the opinion of the Commissioners, still beneficial to the inhabitants of each of the said parishes, or to any class thereof; and, subject thereto, to such other ecclesiastical purposes within the parish to which such property and endowments belong as the Commissioners may think most conducive to the spiritual benefit of the inhabitants of the said parish:

(b.) For the application of the property scheduled as general charity property (b) (to such extent as the Commissioners may think desirable) to such of the objects and purposes to or for which the same is now applied as the Commissioners may consider proper and legal and substantially beneficial to the inhabitants of each of the said parishes, or to any class thereof; and, subject thereto, for the application of such property to any one or more of the following objects, either within the parish to which the property belongs or in which it is now applicable, or within any parish which was formerly united with or formed part of such parish, or in such manner as to secure to the inhabitants of such parish, and to persons employed in such parish though not resident therein, the benefit of such application; that is to say,

To the promotion and improvement of the education of the poorer inhabitants of such parish, and other persons as aforesaid, whether by means of exhibitions, or of technical in-

struction, or of secondary education, or of Sect. 13.
 art education, or of evening lectures, or other-
 wise, as to the Commissioners may seem
 good ;

To the establishment and maintenance of
 libraries under such provisions as may make
 them useful to such poorer inhabitants and
 other persons as aforesaid ;

To the preserving, providing, and main-
 taining of open spaces and recreation grounds
 or drill grounds ;

To the promotion and extension, in such
 manner as the Commissioners may think de-
 sirable, of provident institutions and of work-
 ing men's and women's institutes for the
 benefit of such poorer inhabitants and other
 persons as aforesaid ;

And generally to the physical, moral, and
 social improvement of the poorer inhabitants
 and other persons as aforesaid of such parishes
 by such means as the Commissioners may
 think suitable.

(a) Sect. 7, *ante*.

(b) See sect. 5, *ante*.

14. In every scheme relating to the property or
 endowments belonging to or now applicable in the
 parishes enumerated in the Second Schedule to this Act,
 the Commissioners shall, subject to the carrying over
 and to the provision for saving or making compensation
 hereinbefore contained (a), provide for the following
 objects ; that is to say,

Provisions to
 be inserted
 in schemes
 relating to
 parishes in
 Second
 Schedule.

(a.) For the application of the property, or any part of
 the income thereof, scheduled as ecclesiastical
 charity property (b), to the maintenance of the
 fabric and the services of the church, if any, in
 each parish possessed of ecclesiastical charity
 property applicable to such purposes or to such

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other of the ecclesiastical purposes to which the same is now applied as are, in the opinion of the Commissioners, still beneficial, and to the maintenance of the fabric and monuments of any churches within the City of London of architectural or historical interest which may not already possess sufficient funds available for that purpose; and, subject thereto, for payment to the Ecclesiastical Commissioners of the surplus income of the said ecclesiastical property, to be by them applied to the maintenance of the fabric of churches, or to the better endowment of existing benefices, or to giving theological instruction to persons preparing for holy orders, or generally to extending the benefit of clerical or spiritual ministrations in accordance with the doctrines or by the ministers of the Church of England as by law established in the more populous districts of the Metropolis (c):

- (b.) For the administration and management of the property scheduled as general charity property by the new governing body hereinafter constituted (d), except in cases where the Commissioners may provide as hereinafter mentioned for the administration and management of any property by any existing body or bodies of trustees thereof:
- (c.) For the application by the said new governing body, or by any such existing body or bodies of trustees as lastly hereinbefore mentioned in any such case or cases as last aforesaid, of such last-mentioned property (to such extent as the Commissioners may think desirable) to such of the objects or purposes to or for which the same are now applied as the Commissioners may think proper and legal and substantially beneficial to the inhabitants of the parish in which the same

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is now applicable, or to any class thereof, or in such manner as to secure to the inhabitants of the said parishes, and to persons employed though not resident therein, the benefit of any one or more of the applications in this section hereinafter mentioned; and, subject thereto, for the application by the said new governing body of such property to any one or more of the following objects within the metropolis (c) in manner to be specified by the said scheme or schemes; that is to say,

To the promoting the education of the poorer inhabitants of the metropolis, whether by means of exhibitions, or of technical instruction, or of secondary education, or of art education, or evening lectures, or otherwise, as to the Commissioners may seem good;

To the establishment and maintenance of libraries, or museums, or art collections within the metropolis under such provisions as may make them useful to the poorer inhabitants thereof;

To the preserving, providing, and maintaining of open spaces and recreation grounds or drill grounds within the metropolis;

To the promotion and extension, in such manner as the Commissioners may think desirable, of provident institutions and of working men's and women's institutes for the benefit of the poorer classes of the metropolis;

To the establishment and maintenance, in such places as the Commissioners may think suitable, of convalescent hospitals for the benefit of the poorer classes of the metropolis;

And generally to the improving, by the

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above or any other means which to the Commissioners may seem good, the physical, social, and moral condition of the poorer inhabitants of the metropolis.

- (a) See sect. 7, *ante*.
- (b) Sect. 5, *ante*.
- (c) Defined by sect. 53, *post*.
- (d) Sects. 48 and 49, *post*.

Schemes relating to parishes in First Schedule to this Act may provide for union of governing bodies.

15. In any scheme relating to the property or endowments belonging to or now applicable in the parishes enumerated in the First Schedule to this Act the Commissioners may, if they think fit, provide for the union of any existing governing bodies of two or more endowments into one new governing body for each of the said parishes, or for the creation of a new governing body or bodies in each such parish, and for the transfer to such new governing body or bodies (if created) of the control and management of the charity property and endowments belonging to or applicable in such parishes.

Schemes relating to parishes in Second Schedule may provide for payment of monies to trustees of existing institutions.

16. In any scheme providing for the application of the property scheduled as general charity property (a) now belonging to or applicable in the parishes mentioned in the Second Schedule to this Act, the Commissioners may, if they shall think fit, provide for the payment by the said new governing body of any capital or annual sum or sums of money to the trustees or managers of any institution now existing, or which may hereafter exist, for any of the charitable purposes to or for which such general charity property is hereby made applicable, to be applied by such trustees or managers to or for such purpose; and may, in the case of any scheme relating to an open space or recreation ground or drill ground, provide that any lands or hereditaments purchased in pursuance of such scheme shall be conveyed to and vested in the Metropolitan Board of Works (b) or other proper local authority, and that any monies to be paid for the main-

tenance of such space or ground shall be paid to the said Board (b) or other local authority (as the case may be) in which the legal estate in such open space or ground may be vested.

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(a) See sect. 5, *ante*.

(b) Now the London County Council.

17. In any scheme relating to the general charity property now belonging to or applicable in the parishes mentioned in the said Second Schedule, the Commissioners may (if they shall think fit) provide for the creation of a new body or bodies of trustees, either in a defined local area in the Metropolis (a) or for any one or more of the charitable purposes to or for which such property is hereby made applicable, or in both of these ways, and may also provide for the payment to such new body or bodies of trustees by the said new governing body of such capital or annual sum or sums of money as the scheme may direct, to be applied by such new body or bodies of trustees in pursuance of the scheme. Where any such scheme provides for the creation of such a new body of trustees in or for any such defined local area, the Commissioners shall, so far as conveniently may be, provide for the representation on such new body of trustees of the inhabitants of such local area.

Commissioners may create new bodies of trustees.

(a) Defined, sect. 53, *post*.

18. In framing any scheme relating to the general charity property (a) now belonging to or applicable in the parishes mentioned in the said second schedule, the Commissioners shall consider and declare whether it is for the public advantage that any of the property or endowments belonging to the charity or charities dealt with by the scheme shall continue to be administered and managed by the body or bodies of trustees now administering and managing the same; and the Commissioners may in any such case provide that such property or endowments shall continue to be administered and

Commissioners may retain or modify existing bodies of trustees.

Sect. 18. managed by such body or bodies, and in any such case may alter the constitution of any such existing body or bodies of trustees, and, if they shall think fit, unite such bodies or body with any other body or bodies of trustees so as to create a new body or bodies of trustees for the administration, management, and application of such property and endowments in the said parishes, or any one or more of them, or for the application of such property and endowments, or any part of them, to any one or more of the objects to which such property and endowments may be applicable under the fourteenth section of this Act.

(a) See sect. 5, *ante*.

More schemes than one may be made, and other objects provided for.

19. The Commissioners shall not be bound to provide in any one scheme for all the objects aforesaid (a), but may make provision for such objects, or any one or more of them, by one or by more schemes in the manner they shall judge most convenient, nor shall anything herein be construed to prevent the Commissioners from providing in any such scheme or schemes for any other object which shall upon inquiry appear to them to be necessary or desirable for the purposes of this Act, nor from proposing in any scheme any such modifications and variations as to matters of detail and regulation as shall not be substantially repugnant to any of the provisions of this Act.

(a) Sects. 12—18, *ante*.

Scheme need not specify precise application of general charity property.

20. The Commissioners shall not be bound to specify in any scheme the precise objects to which or the manner in which the general charity property shall be applied by the new governing body (a), but they may (if they shall think fit) specify such objects or manner with such particularity as they may think necessary, and may (if they shall think fit) leave the details of such application

to be subsequently settled by the new governing body in Sect. 20.
manner hereinafter mentioned (b).

(a) See sects. 48 and 49, *post*.

(b) *Ibid*.

21. No scheme shall be so framed as to affect or shall affect any endowment or part of an endowment (as the case may be) originally given to charitable uses less than fifty years before the commencement of this Act, unless the governing body of such endowment assent to the scheme.

Saving for endowments less than fifty years old.

22. In making schemes for the application of charity property or endowments to educational purposes the Commissioners shall have as much regard to the educational interests of girls as of boys.

Educational interests of girls to be regarded.

23. It shall not be obligatory upon the Commissioners to prepare a scheme under this Act for any endowment, or part of an endowment, which is an educational endowment as defined by section five (a) of the Endowed Schools Act, 1869.

Saving for educational endowments under 32 & 33 Vict. c. 56, s. 5.

(a) *Ante*, p. 598.

IV.—*Procedure for approving Schemes.*

24. When the Commissioners have prepared the draft of a scheme (a) they shall cause it to be printed, and printed copies of it to be sent to the governing body of every endowment to which it relates, and to the vestry clerk (b) of the parish in which such endowment is now applicable, and to the Remembrancer of the City of London, and shall also cause the draft, or a proper abstract of it, to be published and circulated in such manner as they think sufficient for giving information to all persons interested.

Schemes to be printed and circulated.

(a) See sect. 11, *ante*.

(b) As to sending documents to the governing body and vestry clerk, see sect. 42, *post*; and as to the sending of documents generally, see sect. 43, *post*.

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Commissioners to receive suggestions respecting schemes.

25. During two months after the first publication of the draft of a scheme, or any longer time which they may appoint, the Commissioners shall receive any objections or suggestions made to them in writing respecting such scheme, and shall duly consider the same.

Schemes to be reprinted and circulated anew.

26. After the expiration of the two months, or such longer time as to the Commissioners may seem proper, the Commissioners shall proceed to revise the scheme, and may, if they think fit, amend the same, and re-publish it and send copies of it as re-published to the persons before mentioned (*a*), and shall submit the scheme for the approval of the Committee of Council on Education.

(*a*) Sect 24, *ante*.

Approval of Committee of Council on Education to schemes.

27. The Committee of Council on Education, as soon as a scheme is submitted to them, shall, before approving the same, cause the scheme to be published and circulated in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that during one month after the first publication of such notice the Committee of Council on Education will receive any objections or suggestions made to them in writing respecting such scheme. After the expiration of the said month the Committee of Council on Education may, if they think fit, approve the scheme or may remit the scheme, with such declaration as the nature of the case seems to them to require, to the Commissioners (*a*).

The Committee of Council on Education as soon as they approve a scheme shall forthwith cause the scheme so approved to be published and circulated in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that unless within two months after the publication of the scheme when approved a petition is presented to the

Committee of Council on Education, such scheme may be approved by her Majesty without being laid before Parliament (b).

Sect. 27.

During the said two months a petition praying that the scheme may be laid before Parliament may be presented to the Committee of Council on Education by the governing body of any endowment to which the scheme relates, or by not less than twenty inhabitant ratepayers of the parish in which the endowment is now applicable.

(a) As to the procedure where a scheme is remitted, see sect. 29, *post*.

(b) See sect. 30, *post*.

28. Any person conceiving himself aggrieved by any provision of a scheme, on the ground of its not making due compensation for any vested interest to which he has been declared entitled as aforesaid (b), may, within two months from the publication of such scheme when approved as aforesaid, petition her Majesty in Council stating the grounds of the petition and praying her Majesty to withhold her approval from the whole or any part of the scheme. Her Majesty may refer any such petition for the consideration and advice of three members at the least of her Privy Council, of whom one shall be a member of the Judicial Committee, and such three members may, if they think fit, admit counsel to be heard in support of and against the petition, and shall have the same power with respect to the costs of all parties to the petition as the High Court of Justice would have if the petition were a proceeding therein for obtaining a scheme. Any petition not proceeded with in accordance with the regulations made with respect to petitions presented to the Judicial Committee of the Privy Council shall be deemed to be withdrawn.

Petitions may be addressed to her Majesty in Council in certain cases (a).

It shall be lawful for her Majesty by Order in Council to declare that no cause has been shown why she should withhold her approval from the said scheme or to

Sect. 28. remit(c) it to the Commissioners with such declaration as the nature of the case may require.

(a) Except where the gross annual income is under 100*l.* : sect. 31, *post*.

(b) Sects. 7 and 10, and sect. 12, sub-s. (c), *ante*.

(c) For procedure in case of remission, see next section.

Proceedings
where scheme
is remitted.

29. Where a scheme is remitted with a declaration the Commissioners may either proceed to prepare another scheme in the matter in the same manner as if no scheme had been previously prepared (a), or may submit for the approval of the Committee of Council on Education such amendments in the scheme as will bring it into conformity with the declaration.

The Committee may, if they think fit, approve the scheme with such amendments, and the same shall be published and circulated in the same manner and subject to the same right of petition to her Majesty in Council as is before directed (b) in the case of the approval of a scheme, and so on from time to time as often as occasion may require.

(a) See sects. 11 and 24, *ante*.

(b) Sects. 27 and 28, *ante*.

Laying of
schemes be-
fore Parlia-
ment, and
approval of
her Majesty
in Council.

30. If within the said two months from the publication of the scheme, when approved as aforesaid, no petition praying that the scheme be laid before Parliament has been presented in pursuance of this Act to the Committee of Council on Education (a), it shall be lawful for her Majesty by Order in Council to declare her approbation (b) of such scheme without the same being laid before Parliament.

If any petition praying that the scheme be laid before Parliament has been presented, but no petition to her Majesty in Council is presented, then the scheme shall be laid before both Houses of Parliament after the expiration of the time for the presentation of a petition to her Majesty in Council (c). If a petition is presented to her Majesty in Council against the scheme, as well as a

Sect. 30.

petition praying that the scheme be laid before Parliament, then the scheme shall be laid before Parliament after any later date at which the petition is withdrawn or her Majesty in Council has declared as aforesaid that no cause has been shown why she should withhold her approval from the scheme. If Parliament be then sitting the scheme shall be so laid before it forthwith. If Parliament be not then sitting, the scheme shall be so laid within three weeks after the beginning of the next ensuing session of Parliament; and if such scheme has lain before Parliament for not less than two months during the same session, then, unless an address has been presented within such two months by one or other of the Houses of Parliament praying her Majesty to withhold her consent from such scheme or any part thereof, it shall be lawful for her Majesty by Order in Council to declare her approbation of such scheme or any part thereof to which such address does not relate.

(a) See sect. 27, *ante*.

(b) With regard to the disapproval of the scheme by her Majesty, see sect. 32, *infra*.

(c) See sect. 28, *ante*.

31. Where a scheme relates to an endowment or endowments which or each of which (as the case may be) during the three years preceding the commencement of this Act has had an average annual gross income of not more than one hundred pounds, no petition shall be presented to her Majesty in Council (a) with reference to such scheme so far as it relates to any such endowment or endowments. The statement of the Commissioners shall be conclusive evidence for the purpose of this section of the income of an endowment.

Exception as to schemes for endowments under 100l.

(a) See sect. 28, *ante*.

32. If any scheme, or any part thereof, is not approved by her Majesty, the Commissioners may thereupon proceed to prepare another scheme in the matter,

New scheme on non-approval of scheme.

Sect. 32. and so on from time to time as often as occasion may require.

Amendment
of schemes.

33. Schemes may be from time to time framed and approved for amending any scheme approved under this Act, and all the provisions of this Act relative to an original scheme shall apply also to an amending scheme, *mutatis mutandis*.

V.—*Supplemental Provisions.*

Schemes,
when to take
effect.

34. No scheme shall of itself have any operation, but the same, when and as approved by her Majesty in Council (*a*), shall, from the date specified in the scheme, or if no date is specified then from the date of the Order in Council, have full operation and effect in the same manner as if it had been enacted in this Act.

Where a scheme shall have been so framed as to make it necessary that any further acts should be done in order to carry out the arrangements prescribed by such scheme, the Commissioners shall have power, immediately after the making of such Order in Council, to do and execute, or cause to be done and executed, all such acts and deeds, and all such conveyances and assurances in the law whatsoever, as may in their judgment be necessary for carrying out the provisions of the scheme approved by such order, and for securing the application of the property dealt with by such scheme to the purposes to which such scheme may direct it to be applied.

(*a*) See sect. 30, *ante*.

Effect of
scheme.

35. Upon a scheme coming into operation every Act of Parliament, letters patent, statute, deed, instrument, trust, or direction relating to the subject-matter of the scheme, and expressed by such scheme to be repealed and abrogated, shall, by virtue of the scheme and of this Act, be repealed and abrogated from the date in that behalf specified, or if no date is specified, from the date

of the scheme coming into operation, and all property Sect. 35.
purporting to be transferred by such scheme shall, without any other conveyance or act in the law (so far as may be), vest in the transferees, and so far as it cannot be so vested shall be held in trust for the transferees.

36. The Order in Council approving a scheme shall Evidence of
scheme.
be conclusive evidence that such scheme was within the scope of and made in conformity with this Act, and the validity of such scheme and order shall not be questioned in any legal proceedings whatever.

37. A scheme of the Commissioners shall not be submitted to the Committee of Council on Education unless Quorum of
Commis-
sioners.
it has been approved at a meeting of the Commissioners at which there are present not less than three Commissioners, but in all other respects one Commissioner may act under this Act.

38. Section eleven of the Charitable Trusts Act, 1853 (*a*) (which relates to the production of documents by public officers), and sections six, seven, eight, and nine of the Charitable Trusts Act, 1855 (*b*) (which relate to evidence and the attendance and examination of witnesses) shall extend to the assistant commissioners under this Act, as if they were the inspectors mentioned in those sections. Extension of
16 & 17 Vict.
c. 137, s. 11,
and 18 & 19
Vict. c. 124,
ss. 6—9, to
assistant
commis-
sioners.

(*a*) *Ante*, p. 471.

(*b*) *Ante*, pp. 537 *et seq.*

39. Whenever it shall appear to the Commissioners Commis-
sioners to
have power
to direct sale
of charity
property and
invest pro-
ceeds.
that any part of the charity property and endowments subject to the provisions of this Act, may with advantage be sold and realised, they may direct such property to be sold upon such terms and conditions and to such purchasers as they may think fit, and the trustee or trustees for the time being of such property shall effect such sale, which shall require no further sanction than

Sect. 39. the order of the Commissioners under their seal directing the same, and the proceeds of every such sale shall be paid to the Official Trustees of Charitable Funds (a) and invested in their names in Government or parliamentary securities.

(a) See note (a) to sect. 51 of the Charit. Trusts Act, 1853, *ante*, p. 514.

Temporary
restriction of
powers of
Charity Com-
missioners,
Court, &c.

40. During the continuance of the power of making schemes under this Act (a), no Court or judge shall, with respect to any charity property or endowment which can be dealt with by a scheme under this Act, make any scheme or appoint any new trustees without the consent of the Commissioners.

(a) See sect. 4, *ante*.

Persons
acquiring
interest after
passing of
Act to be
subject to
schemes.

41. Every interest, right, privilege, or preference, or increased interest, right, privilege, or preference, which any person may acquire after the passing of this Act in or relative to any charity or endowment which can be dealt with by a scheme under this Act, or in the governing body thereof, or as member of any such governing body, or in or relative to any office, place, employment, pension, compensation, allowance, or emolument in the gift of any such governing body, or paid out of the funds of any such charity or endowment, shall be subject to the provisions of any scheme made under this Act; and the governing body of any such charity or endowment shall not, during the continuance of the power of making schemes under this Act, begin to build, rebuild, alter, or enlarge any buildings connected therewith, except with the written consent of the Commissioners or under the directions of such a scheme; and no moneys arising from any such charity or endowment shall after the passing of this Act be applied to the payment of any poor rate or other rate or public charge whatsoever, or to the payment to any parish official of any salary or remuneration, except so far as he may be entitled to receive the same in respect of duties actually performed

in connexion with the services of the church, or of Sect. 41.
 services actually rendered in or about the management
 of any parochial charity, or of duties actually performed
 in connexion with public worship in the church of the
 parish.

42. Notices and documents required to be served on Service of
notices (a).
 or sent to a governing body or vestry clerk for the pur-
 poses of this Act may be served or sent by being left at
 the office, if any, of such governing body or vestry clerk,
 or being served on or sent to the chairman, secretary,
 clerk, or other officer of such governing body, or if there
 is no office, chairman, secretary, clerk, or other officer,
 or none known to the Commissioners (after reasonable
 inquiry), by being publicly advertised in such news-
 papers as the Commissioners shall think fit, or by being
 served upon such person or persons and in such manner
 as the Commissioners shall in their discretion think best
 calculated to give proper notice to the persons concerned
 with the management of the endowment dealt with by
 the scheme.

(a) See also next section.

43. Notices and documents required to be served or Service by
post.
 sent for the purposes of this Act may be served or sent
 by post, and shall be deemed to be served and received
 at the time when the letter containing the same would
 be delivered in the ordinary course of the post; and in
 proving such service or sending it shall be sufficient to
 prove that the letter containing the notices or documents
 was properly addressed and put into the post office.

44. The salaries paid and expenses incurred in carry- Expenses of
carrying out
Act (a).
 ing into effect this Act shall in the first instance be
 defrayed out of moneys to be provided by Parliament,
 but shall be ultimately repaid to the Commissioners of
 her Majesty's Treasury out of the sums carried over to
 a separate account as hereinbefore directed (b). The

Sect. 44. Commissioners (c) shall determine, by orders under their seal, in what proportions such salaries and expenses are to fall upon the several sums so carried over under each scheme, having regard to the respective values of the endowments dealt with by such schemes respectively. If there shall be any surplus of the sums so carried over as aforesaid under each such scheme after making such repayment, such surplus shall form part of the endowments the application whereof is prescribed by each such scheme. If there shall be any deficiency, such deficiency shall be made up to the Commissioners of her Majesty's Treasury by the new governing body hereinafter constituted (d) out of the funds under their management and control.

(a) Orders under this section are to be included in the annual report to Parliament: sect. 47 of this Act, *infra*.

(b) Sect. 12, sub-s. (b), *ante*.

(c) The Charity Commissioners: sect. 2, *ante*.

(d) Sects. 48 and 49, *post*.

Requisitions,
&c. to be
under seal.

45. All requisitions and directions made by the Commissioners under the authority of this Act shall be made by the order of the Commissioners under their seal.

Orders to be
subject to
Charitable
Trusts Acts.

46. All orders made by the Commissioners shall be enforceable by the same means and be subject to the same provisions as orders of the Board of Charity Commissioners under the Charitable Trusts Acts, 1853 to 1869 (a).

(a) Charit. Trusts Act, 1853, s. 14, *ante*, p. 473; Charit. Trusts Amend. Act, 1855, s. 9, *ante*, p. 538; and Charit. Trusts Act, 1860, s. 20, *ante*, p. 574.

Commis-
sioners to
make annual
report to be
laid before
Parliament.

47. The report of the Commissioners made under section sixty of the Charitable Trusts Act, 1853 (a), shall describe the proceedings of the Commissioners under this Act during the year preceding the thirty-first day of December then last past, and there shall be annexed to such report copies of the schemes approved by her Majesty in Council under this Act during such year,

and of any orders made by the Commissioners during such year under the forty-fourth section of this Act. Sect. 47.

(a) *Ante*, p. 519.

VI.—*New Governing Body.*

48. There shall be established a new governing body under this Act, which shall be called “The Trustees of the London Parochial Charities,” and shall be a body corporate, with perpetual succession and a common seal. Such new governing body shall administer the property hereinbefore (a) directed to be placed by schemes to be framed by the Commissioners under its administration and management, and shall consist of twenty-one persons, of whom five shall be nominated by the Crown, four by the Corporation of the City of London, and the remainder (four of whom shall, in the first instance, be chosen from among the persons who are now trustees of the parochial charities of the City of London) in such manner or by such persons or bodies as the Commissioners shall by scheme provide, regard being had by them to the interests of the various classes of the community who are or may hereafter be interested in the charity property to be administered by such new governing body.

Establishment of new governing body for management of charity funds.

Each member shall hold office for six years, but shall be re-eligible.

Every member who shall not have attended a meeting for the period of two years shall vacate his office, but shall be re-eligible.

(a) See sect. 14, sub-ss. (b) and (c), and sects. 16, 17, 20, *ante*.

49. The Commissioners shall by a scheme make regulations prescribing the time and manner of the nominating or electing of the members of the new governing body and regarding the vacating of their office by a certain number of the first members thereof, so as to provide that some of them shall vacate their office at the end of two, others at the end of four, and the rest at the end

Commissioners to make regulations for nomination of members of governing body, &c.

Sect. 49.

of six years, and with respect to the filling up of vacancies arising from death or resignation, and generally with respect to the constitution of the new governing body, and the conduct by it of its business, and the making by it of regulations or byelaws, whether varying or merely subsidiary to the rules and regulations made by the Commissioners. The Commissioners shall also fix the date upon which the functions and powers of the new governing body shall commence.

Schemes to contain no preference for any religious denomination.

50. In all schemes framed under this Act affecting general charity property which is not expressly limited, by the deed of foundation, to spiritual purposes of any religious denomination no preference shall be shown to any person on account of membership of any church, nor shall conformity to any church be made the condition of enjoying any benefits, nor shall it be made a condition in appointing a master or mistress to any school founded or reformed under this Act, that he or she shall be a member of any church, nor shall endowments under this Act be attached to any institution, admission to which, or to the governing body of which, is limited to the members of any denomination.

Costs of Parliamentary proceedings to be determined by Commissioners.

51. The Commissioners shall ascertain what costs, charges, and expenses have been reasonably incurred by the existing trustees of the City Parochial Charities, or any of them, in relation to this Act, or the Bills of similar name in the sessions of 1881 and 1882 (*a*), and shall direct the new governing body (*b*) to pay to such trustees, or any two of them, to be chosen for that purpose by the Commissioners the amount of the costs, charges, and expenses so incurred as aforesaid out of the first moneys which shall come to their hands or be placed at the disposal of the said governing body.

(*a*) See *ante*, p. 452.

(*b*) Sects. 48 and 49, *ante*.

52. Nothing in this Act shall apply to any endowment or part of any endowment which, or the income whereof, is applicable, or is applied for the benefit of children maintained or educated by the Governors of Christ's Hospital, in the City of London, and presented thereto by any parochial authority in the City of London or otherwise.

Sect. 52.

Saving for endowments at Christ's Hospital.

53. In this Act, unless the context otherwise requires—

Interpretation of terms.

The term "Metropolis" means the places for the time being constituting the Metropolitan Police District^(a), together with the City of London and the liberties thereof:

The term "governing body" means any body corporate, persons, or person, who hold or holds, or who have or has any power of control or management over, any charity property or endowment dealt with by this Act:

The term "endowment" means every description of property, real, personal, or mixed, which is dedicated to any such charitable uses as are referred to in this Act, in whomsoever such property may be vested and in whosoever name it may be standing, and whether such property is in possession or reversion, or a thing in action:

The term "Committee of Council on Education" means the Lords of the Committee of her Majesty's Privy Council on Education:

The term "person" includes any body of persons, whether corporate or unincorporate.

(a) See 10 Geo. IV. c. 44, ss. 4, 34, 35, and Schedule; 2 & 3 Vict. c. 47, s. 2; and 3 & 4 Vict. c. 84, ss. 2 and 5.

54. This Act, so far as is consistent with the tenor thereof, shall be construed together with the Charitable Trusts Acts, 1853 to 1869.

Act to be construed together with Charitable Trusts Acts.

Sched. I.

SCHEDULES.

THE FIRST SCHEDULE.

Sects. 13, 15.	Saint Andrew, Holborn. Saint Botolph, Aldgate. Saint Botolph, Bishopsgate.	Saint Bride, Fleet Street. Saint Giles, Cripplegate.
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THE SECOND SCHEDULE.

Sects. 14, 16, 17.	Allhallows, Barking. Allhallows, Bread Street. Allhallows the Great. Allhallows the Less. Allhallows, Honey Lane. Allhallows, Lombard Street. Allhallows, London Wall. Allhallows, Staining. Christ Church, Newgate Street. Saint Alban, Wood Street. Saint Alphage, London Wall. Saint Andrew by the Wardrobe. Saint Andrew Hubbard. Saint Andrew Undershaft. Saint Anne and Saint Agnes. Saint Anne, Blackfriars. Saint Antholin. Saint Augustine. Saint Bartholomew the Great. Saint Bartholomew the Less. Saint Bartholomew, Exchange. Saint Bartholomew, Moor Lane. Saint Bene't, Fink. Saint Bene't, Gracechurch. Saint Bene't, Paul's Wharf. Saint Bene't, Sherehog. Saint Botolph, Aldersgate. Saint Botolph, Billingsgate. Saint Botolph, Glasshouse Yard. Saint Christopher le Stocks. Saint Clement, Eastcheap. Saint Dionis, Backchurch. Saint Dunstan in the East. Saint Dunstan in the West. Saint Edmund the King and Martyr. Saint Ethelburga. Saint Faith under Saint Paul's. Saint Gabriel, Fenchurch.	Saint George, Botolph Lane. Saint Gregory by Saint Paul. Saint Helen, Bishopsgate. Saint James, Garlickhythe. Saint James within Aldgate. Saint John the Baptist, upon Walbrook. Saint John the Evangelist. Saint John Zachary. Saint Katherine Coleman. Saint Katherine Cree. Saint Lawrence, Jewry. Saint Lawrence, Pountney. Saint Leonard, East Cheap. Saint Leonard, Foster Lane. Saint Magnus the Martyr. Saint Margaret, Moyses. Saint Margaret, Lothbury. Saint Margaret, New Fish Street. Saint Margaret Pattens. Saint Martin, Ludgate. Saint Martin, Orgars. Saint Martin, Outwich. Saint Martin, Pomeroy. Saint Martin, Vintry. Saint Mary, Abchurch. Saint Mary, Aldermanbury. Saint Mary, Aldermary. Saint Mary-at-Hill. Saint Mary, Bothaw. Saint Mary, Colechurch. Saint Mary-le-Bow. Saint Mary Magdalen, Milk Street. Saint Mary Magdalen, Old Fish Street. Saint Mary, Mounthaw. Saint Mary, Somerset. Saint Mary, Staining.
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Sched. II.

Saint Mary, Woolchurch Haw.
 Saint Mary, Woolnoth.
 Saint Matthew, Friday Street.
 Saint Michael, Basishaw.
 Saint Michael, Cornhill.
 Saint Michael, Crooked Lane.
 Saint Michael-le-Querne.
 Saint Michael, Paternoster Royal.
 Saint Michael, Queenhithe.
 Saint Michael, Wood Street.
 Saint Mildred, Bread Street.
 Saint Mildred the Virgin, Poultry.
 Saint Nicholas, Acons.
 Saint Nicholas, Coleabbey.
 Saint Nicholas, Olave.
 Saint Olave, Hart Street, with Saint
 Nicholas in the Shambles.

Saint Olave, Old Jewry.
 Saint Olave, Silver Street.
 Saint Pancras, Soper Lane.
 Saint Peter, Cornhill.
 Saint Peter-le-Poer.
 Saint Peter, Paul's Wharf.
 Saint Peter, West Cheap.
 Saint Sepulchre.
 Saint Stephen, Coleman Street.
 Saint Stephen, Walbrook.
 Saint Swithin, London Stone.
 Saint Thomas Apostle.
 Saint Thomas in the Rolls.
 Saint Vedast, Foster.
 Holy Trinity the Less.
 Holy Trinity, Minories.
 Holy Trinity, Gough Square.

MUNICIPAL CORPORATIONS ACT, 1883.

46 & 47 VICT. c. 18.

An Act to make provision respecting certain Municipal Corporations and other Local Authorities not subject to the Municipal Corporation Act. [29th June 1883.]

WHEREAS Commissioners were appointed by his late Majesty King William the Fourth (in this Act referred to as the Commissioners of 1834) to inquire into Municipal Corporations in England and Wales, and made reports respecting divers corporations, including most of those mentioned in the schedules to this Act:

And whereas the Municipal Corporation Acts consolidated and repealed by the Municipal Corporations Act, 1882, were passed and applied to most of the places mentioned in the above report, but not to those which are mentioned in the schedules to this Act:

And whereas Commissioners were appointed by her Majesty to inquire into Municipal Corporations not subject to the Municipal Corporation Acts (in this Act referred to as the Commissioners of 1876), and have made reports to her Majesty respecting the places mentioned in the schedules to this Act, and it is expedient to make the provisions hereinafter appearing respecting those places:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Municipal Corporations Act, 1883 (*a*).

(*a*) It has been stated (*ante*, p. 70) that the general property of municipal

corporations must be considered to be held upon a charitable trust. Municipal corporations falling within the Municipal Corporations Act, 1882, have been specially dealt with by the legislature in that Act; but as to those which have not been so dealt with, and which fall within the present Act, it may perhaps be said that all that the Act effects is to enable the Charity Commissioners to initiate schemes for the regulation of trusts already within their jurisdiction.

The places to which this Act applies are enumerated in the Schedules (*post*, pp. 750—752). The enumeration was arrived at as follows:—

The Commissioners of 1876 stated in their General Report (para. 4) that 101 of the places inquired into by the Commissioners of 1834 had not been reached by legislation. They also added nine places which had not come under the notice of those commissioners. Of this total of 110, the commissioners excluded 22 from their report, on the ground that they had never been municipal or had long ceased to be so. These are the places comprised in Sched. II., Part 1, of the present Act.

The remaining 88 places were investigated, but two of them (Burton-upon-Trent and Conway) having obtained charters before the publication of the final report, were not included in it. Of the remainder, ten were found to have become virtually extinct. These were included among the places specially reported on by, but were excluded from the General Report of the commissioners. They are the places specified in Sched. II., Part 2, of this Act.

Seventy-four of the seventy-six remaining places, which were included both in the General and Special Reports of the commissioners, are those enumerated in Sched. I., Parts 1 and 2, of this Act. The two places omitted are Lewes and Caergwle. Lewes was omitted because, as stated in a note to Sched. I. (*post*, p. 752), it had subsequently received a charter: but for the omission of Caergwle no reason is apparent.

2. On and after the twenty-fifth day of March one thousand eight hundred and eighty-six, or such later day, not after the twenty-ninth day of September one thousand eight hundred and eighty-six, as her Majesty in Council may in the case of any place or places appoint, the following provisions shall (subject to the savings for vested interests and other provisions contained in this Act)(a) apply to each of the places mentioned in the schedules to this Act; that is to say,

- (1.) All civil, criminal, and Admiralty jurisdiction of any corporate officer, court, or judge of the said place appointed or holding office under any charter, grant, or prescription shall cease, whether such jurisdiction is conferred by such charter, grant, or prescription, or by any Act, and the place shall be subject to the same jurisdiction as the part of the county in which it is

Sect. 1
(a).

Abolition
of special
judicial
bodies, ex-
clusive rights
of trading,
exempting
from juries,
&c.

Sect. 2.

situate or to which it adjoins, and if it adjoins more than one county or part of a county, then as the county or part with which it has the longest common boundary (*b*):

- (2.) All exclusive rights of trading(*c*), local exemptions from juries(*d*), and other local franchises, privileges, and exemptions existing under any charter or grant or prescription shall cease.

(*a*) Sects. 4, 10, 11, 13, 14, 17—24, 25, *post*.

(*b*) This sub-section follows sects. 107, 108 of the repealed Municipal Corporations Act of 1835 (5 & 6 Will. IV. c. 76).

(*c*) See sect. 14 of the Act of 1835.

(*d*) See sect. 123 of the Act of 1835.

Future
abolition of
corporations,
except as
provided by
new charter
or by scheme
under 40 & 41
Vict. c. 69.

3. On and after the twenty-fifth day of March one thousand eight hundred and eighty-six, or such later day, not after the twenty-ninth day of September one thousand eight hundred and eighty-six, as her Majesty in Council may, in the case of any place or places, appoint, the following provisions shall (subject to the savings for vested interests and other provisions contained in this Act)(*a*) apply to each of the places mentioned in the schedules to this Act to which her Majesty may not be pleased before the said day to grant a new charter (*b*); that is to say,

- (*a*) The place shall not be a corporate town or borough, and any municipal or other corporation thereof(*c*) existing under any charter or grant or prescription shall be dissolved:

- (*b*) All property(*d*) of any corporation in the place which is dissolved by this Act, or of any person as member or officer thereof, or of any Court or judge whose jurisdiction is abolished by this Act, shall be applied for the public benefit of the inhabitants of the place in such manner as may be for the time being provided by a scheme of the Charity Commissioners(*e*); or, in a case where a scheme is made by the Local Government Board(*f*), by that scheme,

and shall vest in such persons or body corporate Sect. 3.
as may be specified in such scheme.

(2.) Provided that until any such scheme takes effect the said property shall continue to be held, managed, and enjoyed as heretofore in like manner as if a scheme of the Charity Commissioners, in pursuance of this Act, had provided for such holding, management, and enjoyment, and for that purpose the persons managing the property shall continue in like manner as if they were a body constituted by the scheme for the administration of such property, but the legal estate in the property shall vest in the official trustees (*g*).

(a) Sects. 4, 10, 11, 13, 14, 17—24, 25.

(b) The places to which charters have been granted are marked with an asterisk in the schedules to this Act.

(c) The name of the corporation appears in the second column to the first schedule.

(d) Defined by sect. 9, sub-s. (2), *post*.

(e) As to the powers of the Charity Commissioners, see sects. 8 and 9, *post*.

(f) See sect. 7 of this Act, *post*.

The provisions for the interim management of property before a scheme of the Charity Commissioners takes effect are contained in sect. 8 of this Act, *post*.

(g) *I.e.*, the Official Trustee of Charity Lands (see Charit. Trusts Act, 1853, s. 48, and Charit. Trusts Amend. Act, 1855, s. 15, *ante*); and, as regards other property, the Official Trustees of Charitable Funds (see Charit. Trusts Act, 1853, s. 51, and Charit. Trusts Amend. Act, 1855, s. 18, *ante*).

The provisions as to the interim management of the property are contained in sect. 8, *post*.

4. Nothing in this Act shall prevent the application to any place of any charter applying the Municipal Corporation Acts (*a*) which her Majesty may be pleased to grant, or affect anything done in pursuance of those Acts or any scheme thereunder, and shall not affect the operation of any such charter, thing, or scheme; save that nothing in the said Acts or scheme shall authorize the establishment or continuance of any court for the trial of civil actions. Saving for
new charters
and for
charities.

(2.) Nothing in this Act shall affect the right to the benefit of any charity, or shall alter or confer any power

Sect. 4. of altering the defined charitable purposes (if any) to which any property is by law applicable at the passing of this Act.

(a) The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), and any Act which may be passed amending it: see sect. 27 of this Act, and sect. 7, sub-s. (1), of the Municipal Corporations Act, 1882.

Inquiry as to places mentioned in first part of First Schedule.

5. Whereas the Commissioners of 1876 reported that the places mentioned in the first part of the First Schedule to this Act might be dealt with by being subjected to the provisions of the Municipal Corporations Act, 1835, and the Acts amending the same, as if they were mentioned in Schedule B. of the Municipal Corporations Act, 1835. Be it therefore enacted as follows:—

(1.) As soon as conveniently may be after the passing of this Act, the Privy Council shall cause an inquiry to be made into the expediency of advising her Majesty to grant a charter extending the Municipal Corporation Acts to the several places mentioned in the first part of the First Schedule to this Act (a), and also whether it is expedient that any adjoining district not included in the existing corporations shall be included in the places to which such charters may be granted, and shall report to her Majesty thereon.

(2.) The expenses of such inquiry shall be regulated by the Commissioners of Her Majesty's Treasury, and paid out of moneys provided by Parliament.

(3.) Nothing in this section shall require an inquiry to be held with respect to any place with respect to which a similar inquiry has been held since the first day of January, one thousand eight hundred and seventy-nine.

(a) The places to which charters have been granted are marked by an asterisk in the schedules of this Act.

Power to Privy Council to preserve certain courts and officers.

6. The Privy Council, upon being satisfied by any applicants after inquiry that it is expedient for the public so to do, may, by order, provide for retaining any court leet or other court or any officer, whether as returning

officer for the return of members to serve in Parliament, or as town clerk for the purpose of the registration of parliamentary voters, or otherwise, and for the appointment of any officer so retained, subject in every case to such exceptions, restrictions, and modifications as seem expedient. Sect. 6.

(2.) Subject to the provisions of any Order of the Privy Council, any person who at the passing of this Act holds an office by virtue of which he is such returning officer or town clerk as aforesaid, may, during the time limited for the tenure of his office, continue to perform the duties of such returning officer or town clerk as aforesaid, and on the expiration of such time, or his otherwise ceasing to perform the duties, the said duties shall, so far as regards the returning officer, be performed in manner provided by the Act of the session of the seventeenth and eighteenth years of the reign of her present Majesty, chapter fifty-seven, intituled, "An Act to amend the law relating to the appointment of returning officers in certain cases," and, so far as regards the town clerk, shall be performed by the person in the parliamentary borough who is town clerk within the meaning of section one hundred and one of the Parliamentary Registration Act, 1843.

7. Whereas there are local boards or improvement commissioners in some of the places mentioned in the First Schedule to this Act, and the Commissioners of 1876 reported that it might be expedient to establish local boards in other of such places: Be it therefore enacted as follows:—

Scheme of
Local Govern-
ment Board
respecting
places under
local boards or
improvement
commis-
sioners.

(1.) Where any part of any of the places mentioned in any of the schedules to this Act is comprised in the district of any local board or improvement commissioners, whether established before or after the passing of this Act, and her Majesty is not pleased to grant a charter to such place, the Local Government Board, after such local inquiry as they think expedient, may, at any time before any corporation in the said place becomes abolished by

Sect. 7.
45 & 46 Vict.
c. 50.

this Act, make such scheme as might be made by the Committee of Council under part eleven of the Municipal Corporations Act, 1882 (a):

(2.) Sections two hundred and thirteen and two hundred and fourteen of and the Seventh Schedule to that Act shall, so far as is consistent with the tenour thereof, apply accordingly as if they were herein re-enacted, with the substitution of the Local Government Board for the Committee of Council, and of the said district for borough, and with a limitation to the purposes of this section:

(3.) A scheme may be made as aforesaid for the purpose of amending any previous scheme under this section:

38 & 39 Vict.
c. 55.

(4.) Sections two hundred and ninety-four, two hundred and ninety-five, and two hundred and ninety-six of the Public Health Act, 1875, shall, so far as is consistent with the tenour thereof, apply to any local inquiry held by order of the Local Government Board for the purposes of this section.

(a) The places which have been dealt with by Local Government Board schemes are marked with a double asterisk in the schedules to this Act.

Power of
Charity Com-
missioners.

8. (1.) The Charity Commissioners may provide, by the appointment of interim trustees and otherwise, for the security and proper management and application of the property, for the application of which such Commissioners have, or may in certain events have, power under this Act to make a scheme (a).

(2.) If any such property has after the first day of March one thousand eight hundred and eighty-three, and before the date at which a charter or a scheme under this Act, or the Municipal Corporations Act, 1882, as the case may be, takes effect, been alienated by way of sale, mortgage, grant, lease, charge, or otherwise, and such alienation has not been made in pursuance of some covenant, contract, or agreement bonâ fide made or entered into on or before the said first day of March, or of some resolution duly entered in the corporation books of the corporation on or before the said first day of

Sect. 8.

March, or in pursuance of any right saved by this Act, and such alienation has been made collusively and for no consideration, or for insufficient consideration, such alienation may be set aside in the like proceedings (instituted with the consent of the Charity Commissioners or of the Attorney-General) and in like manner as a lease of land of a charity granted without due consideration may be set aside(*b*): provided that if a charter is granted or a scheme made whereby the property is affected, the said proceedings shall be commenced within one year after the charter or scheme takes effect.

(3.) Anything authorized by this Act to be done by the Charity Commissioners may be done by an order of those Commissioners, which may be made in like manner as if the property were the endowment of a charity and application had been made as provided by the Charitable Trusts Acts, 1853 to 1869(*c*), and an order of the Charity Commissioners may be made at any time after the passing of this Act, so, however, that the order shall not take effect until such date as the Charity Commissioners fix as being, in their opinion, under the circumstances of the case, most consistent with the purposes of this Act.

16 & 17 Vict.
c. 137.
32 & 33 Vict.
c. 110.

(4.) Any corporation or person directly affected by any order of the Charity Commissioners under this Act in relation to any property made before a scheme under this Act has provided for the application of such property, or directly affected by the order of the Charity Commissioners which first establishes a scheme providing for the application of such property, may, if aggrieved by the order, appeal (except as hereinafter provided) to the Privy Council, and the Privy Council after considering the objections to the order and, if it seem necessary, hearing the parties, may make such order as in their opinion the Charity Commissioners ought to have made, and such order shall have the same effect under this Act as if made by the Charity Commissioners, and an appeal shall not lie to the High Court of Justice under the Charitable Trusts Acts, 1853 to 1869(*d*), against any

Sect. 8. order against which an appeal to the Privy Council can be had in pursuance of this enactment.

(5.) After a scheme has been made under this Act providing for the application of any property the Charitable Trusts Acts, 1853 to 1869, shall apply in all respects as if the scheme were a scheme made in pursuance of those Acts, and the property shall for the purpose of those Acts be deemed to be the endowment of a charity.

(a) See sect. 3, *ante*.

(b) By action in the nature of an information. See *ante*, pp. 296 *et seq.*

(c) See Charit. Trusts Act, 1860, ss. 2 and 4, *ante*, pp. 558, 565.

(d) Charit. Trusts Act, 1860, s. 8, *ante*, p. 567; Charit. Trusts Act, 1869, s. 10, *ante*, p. 586.

Provision as
to property
and transfer
thereof.

9. (1.) All property by this Act vested in the official trustees (a) or any body corporate or persons shall, so far as the same can be transferred by this Act, be transferred by virtue of this Act, and so far as the same cannot be so transferred, be held in trust for those trustees, body corporate, or persons, and shall be vested for the same estate and interest, and subject to the same liabilities, for and subject to which such property was held at the time immediately before the same becomes so vested.

(2.) For the purposes of this Act the expression "property" includes all property, real and personal, and all things in action, and all rights of common or commonable rights, and rights to toll, and all franchises, privileges, and rights which have any pecuniary value, and all charters, records, deeds, books, and documents, and includes any estate or interest, legal or equitable, in any property as so defined; and all property held, enjoyed, claimed, or administered by any corporation, Court, judge, or person shall for the purposes of this Act be deemed to be the property of such corporation or person.

(3.) All powers and duties conferred or imposed by any local Act of Parliament (including a Provisional Order confirmed by Parliament) on, and all trusts administered by, any corporation abolished by this Act (a), or any officers or nominees of such corporation, either

alone or jointly with other persons, shall vest in and be exercised, and performed, and administered by such persons as may be provided by a scheme under this Act, and until such scheme takes effect by the same persons as at the passing of this Act.

Sect. 9.

(4.) Any question which may arise as to whether anything is property within the meaning of this Act, or as to whether anything is vested in the official trustees or any body corporate or persons as provided by this Act, shall in the first instance be decided by the Charity Commissioners, subject, nevertheless, to an appeal to the High Court of Justice, as provided by section eight of the Charitable Trusts Act, 1860 (*b*), and such appeal may be presented by any person interested or claiming to be interested in the property, and the provisions of this Act with respect to an appeal to the Privy Council shall not apply (*c*).

23 & 24 Vict.
c. 136.

(a) Sect. 3, *ante*.

(b) *Ante*, p. 567.

(c) Sect. 8, sub-sect. (4), *ante*.

10. (1.) Every person who now is or hereafter may be an inhabitant of any borough mentioned in any of the schedules to this Act, and also every person who has been admitted or might hereafter have been admitted a freeman or burgess of any such borough if this Act had not been passed, or who now is or hereafter may be the wife or widow or son or daughter of any freeman or burgess, or who may have espoused or may hereafter espouse the daughter or widow of any freeman or burgess, or who has been or may hereafter be bound an apprentice, shall have and enjoy and be entitled to acquire and enjoy the same share and benefit of the lands, tenements, and hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any such borough or any municipal or other corporation thereof, and of any lands, tenements, and hereditaments, and any sum or sums of money, chattels,

Reservation
of rights of
property and
beneficial
exemptions
to freemen,
their wives
and children.

Sect. 10. securities for money, or other personal estate, of which any person or any corporation may be seised or possessed in whole or in part for any charitable uses or trusts, as fully and effectually, and for such time and in such manner as he or she by any statute, charter, byelaw, or custom in force at the time of passing this Act might or could have had, acquired, or enjoyed in case this Act had not been passed: Provided that—

- (a) The total amount to be divided amongst the persons whose rights are herein reserved in this behalf shall not exceed the surplus which shall remain after payment of the interest of all lawful debts chargeable upon the real or personal estate out of which the sums so to be divided have arisen, together with the salaries of municipal officers, and all other lawful expenses, which on the first day of March one thousand eight hundred and eighty-three were defrayed out of or chargeable upon the same:
- (b) Nothing herein-before contained shall be construed to apply to any claim, right, or title of any burgesses or freemen, or of any person, to any discharge or exemption from any tolls or dues levied wholly or in part by or to the use or benefit of any borough or corporation; and after the passing of this Act no person shall have or be entitled to claim thenceforward any discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any corporation except as herein-after is excepted:
- (c) Nevertheless, every person who on the said first day of March was an inhabitant or was entitled to be admitted a freeman or burgess of any borough mentioned in any of the schedules to this Act, or who on the said first day of March was the wife or widow, son or daughter, of any freeman or burgess of any such borough, or who

Sect. 10.

on the said first day of March was bound an apprentice, shall be entitled to have or acquire and enjoy the same discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any borough or corporation as fully and for such time and in such sort as he or she by any statute, charter, byelaw, or custom in force on the first day of March might or would have had, acquired, and enjoyed the same if this Act had not been passed, and no further or otherwise:

- (d) Where, by any statute, charter, byelaw, or custom in force at the time of passing this Act within any of the boroughs mentioned in any of the schedules to this Act, any person whose rights in this behalf are herein reserved would have been liable in case this Act had not been passed to pay any fine, fee, or sum of money to any corporation, or to any member, officer, or servant of any corporation, in consideration of his freedom, or of his or her title to such rights as are herein reserved, no such person shall be entitled to have or claim any share or benefit in respect of the rights herein reserved as aforesaid until he or she shall have paid the full amount of such fine, fee, or sum of money to the treasurer of such borough, elected under the Municipal Corporations Act, 1882, or to such other person as may be appointed in that behalf by a scheme under that Act or under this Act:
- (e) Nothing in this Act contained shall be construed to entitle any person to any share or benefit of the rights herein reserved who shall not have first fulfilled every condition which, if this Act had not passed, would have been a condition precedent to his or her being entitled to the benefit of such rights, so far as the same is

Sect. 10.

capable of being fulfilled according to the provisions of this Act, or to strengthen, confirm, or affect any claim, right, or title of any burgesses or freemen of any borough or corporation, or of any person, to the benefit of any such rights as are hereinbefore reserved, but the same in every case may be brought in question, impeached, and set aside in like manner as if this Act had not been passed (*a*).

(2.) From and after the passing of this Act no person shall be elected, made, or admitted a burgess or freeman of any borough mentioned in any of the schedules to this Act by gift or purchase (*b*).

(3.) Every scheme under the Municipal Corporations Act, 1882, or this Act, shall, if need be, provide for carrying this section into effect, and for the enrolment of persons from time to time entitled under this section, and a scheme may be made for that purpose or for the purpose of managing any property to which the said persons may be for the time being entitled.

(*a*) Cf. with subs. (1) of this section sect. 2 of the repealed Municipal Corporations Act of 1835 (5 & 6 Will. 4, c. 76); and sects. 201—209 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

(*b*) This sub-sect. reproduces sect. 3 of the repealed Municipal Corporations Act of 1835.

Saving for
vested
interests.

11. (1.) If any person alleges that he is by virtue of this Act deprived of any emolument or pecuniary profit, or any other profit of a pecuniary value, he may apply to the Local Government Board, and that Board, if satisfied that the allegation is true, and that under all the circumstances the applicant ought, if deprived thereof, to receive compensation for the same, may order that he shall continue to enjoy such emolument or profit, or shall receive such compensation for the same as the Board may think just, and if the compensation is pecuniary, the money shall (and if necessary from time to time) be raised in such manner or paid out of such funds (being, so far as may

be, the same manner or funds in or out of which the emolument or profit was previously raised or paid) as the order directs. Sect. 11.

(2.) All liabilities of any corporation, court, judge, or officer abolished by this Act, existing at the time of such abolition, shall be discharged out of the same funds and in the same manner, as near as may be, as they would have been if this Act had not passed; and the Local Government Board, on the application of any person interested, may by order provide in such manner as they think expedient for the discharge of such liabilities.

(3.) For the purposes of this section, a rate, toll, or due may continue to be levied, and may be made, assessed, levied, and collected by such persons as the Local Government Board direct, in like manner as if they were the persons who, if this Act had not passed, would have been authorized to make, assess, and levy such rate, toll, or due.

(4.) An order under this section may be made an order of the High Court of Justice, and may be enforced accordingly.

12. Nothing in this Act shall be in derogation of any power otherwise vested in the Committee of Council, or the Charity Commissioners, and the Committee of Council and Charity Commissioners may exercise for the purposes of this Act all powers otherwise vested in them in relation to boroughs and charities respectively. Saving for powers of Committee of Council and Charity Commissioners.

13. With respect to any cinque port or ancient town or member of a cinque port mentioned in the schedules to this Act, the following provisions shall have effect:— Saving as to Cinque Ports.

(1.) Nothing in this Act shall diminish the jurisdiction of the Court of Admiralty of the Cinque Ports within the boundaries defined by the Act of the session of the first and second years of the reign of King George the Fourth, chapter seventy-six, intituled “An Act to continue and amend certain Acts for preventing the various frauds and

Sect. 13.

“ depredations committed on merchants, ship-
 “ owners, and underwriters by boatmen and
 “ others within the jurisdiction of the Cinque
 “ Ports; and also for remedying certain defects
 “ relative to the adjustment of salvage under a
 “ statute made in the twelfth year of the reign
 “ of Her late Majesty Queen Anne,” or of any
 Commissioners appointed in pursuance of that
 Act :

- (2.) Nothing in this Act shall increase the authority or jurisdiction which any cinque port, or any court, justice, or officer of a cinque port, has over any member of a cinque port, notwithstanding that that member is, in pursuance of this Act, no longer corporate :
- (3.) The non-corporate members of any such cinque port or ancient town shall form part of the body of the county, and hundred, and other division in which those members are respectively situate.

Saving as to
 Winchelsea.

14. In the event of a charter not being granted to Winchelsea the property of the corporation of Winchelsea shall continue to be held, managed, and enjoyed as heretofore, in like manner as if a scheme of the Charity Commissioners, in pursuance of this Act, had provided for such holding, management, and enjoyment, and for that purpose the corporation of Winchelsea shall continue undissolved in like manner as if it were constituted by the said scheme; and, notwithstanding anything in this Act, Winchelsea shall continue to be entitled an ancient town of the cinque ports (a).

(a) No charter has been granted to Winchelsea.

Provision
 as to local
 authorities
 and officers.

15. (1.) Every body referred to in the First Schedule to this Act shall, notwithstanding any mistake in the name or description thereof, be subject to this Act, as a corporation, and be deemed to be a local authority within the meaning of section two hundred and thirteen of the Municipal Corporations Act, 1882.

(2.) Any mayor, jurat, recorder, justice of the peace, coroner, bailiff, sergeant, inspector, or constable, or any other officer by whatever name called, having or claiming the authority of any judge or officer above named, shall be deemed to be included in this Act in the expression judge or officer, as the case may be. Sect. 15.

(3.) Where in any report of the Commissioners of 1834, or in any report of the Commissioners of 1876, any corporation, court, sessions, judge, recorder, justice, coroner, constable, inspector, authority, or officer, or any franchise, privilege, right, or exemption, or any property, is mentioned in connection with any place mentioned in the schedules to this Act, that mention shall be evidence that the same is subject to this Act.

16. (1.) Nothing in this Act shall affect the right enjoyed by any person at the passing of this Act to vote for any member or members to serve in Parliament. Saving for rights of voting and acts done.

(2.) The abolition by this Act of any jurisdiction shall not affect anything done in pursuance of such jurisdiction before it is abolished; any offence committed before such abolition may be prosecuted, tried, and punished as if the jurisdiction had been abolished at the time when the offence was committed.

17. Whereas it appears from the Report of the Commissioners of 1876, that doubt exists as to whether the corporation mentioned in Part II. of the First Schedule to this Act, as existing or reputed to exist in Romney Marsh, is a municipal corporation, and it is expedient to make such provision respecting the same and respecting the lords bailiff and jurats of Romney Marsh, as hereinafter contained: Be it therefore enacted as follows:— Saving for Romney Marsh.

(1) The reputed corporation of the bailiff jurats and commonalty of Romney Marsh shall, notwithstanding anything in this Act, continue to exist, and to elect officers, and to hold the property vested in them, but any such corporation

Sect. 17.

shall not have or exercise any municipal rights or powers; and all property vested in such corporation shall continue to be applicable for the purposes to which it is at present by law applicable or otherwise for the benefit of the inhabitants of the said place.

- (2) Notwithstanding anything in this Act, the bailiff and justices of the corporation of Romney Marsh shall continue to be appointed and elected, as nearly as may be, in like manner as heretofore, and to have authority as justices in like manner as if they were justices assigned by a commission from her Majesty in a liberty not having a separate court of quarter sessions.
- (3) The reputed corporation of the lords bailiff and jurats of Romney Marsh shall not be deemed a municipal corporation, and notwithstanding anything in this Act shall continue to exist, to elect officers, to hold the property vested in them, and to exercise the same powers as heretofore, and all property vested in such corporation shall continue to be applicable for the purposes to which it is at present by law applicable or otherwise for the benefit of the inhabitants of the said place.

Saving for
Havering-
atte-Bower.

18. Whereas, it appears from the report of the Commissioners of 1876 that doubt exists whether the corporation of Havering-atte-Bower, is a municipal corporation, and whether an Order in Council for the union of Havering-atte-Bower to the county of Essex might be made in pursuance of the Act of the session of the thirteenth and fourteenth years of the reign of her present Majesty, chapter one hundred and five, intituled "An Act for "facilitating the Union of Liberties with the Counties in "which they are situate," upon the petition of the justices of the said county without any petition from the justices

of Havering-atte-Bower: Be it therefore enacted as follows : Sect. 18.

Nothing in this Act shall be deemed to apply to Havering-atte-Bower, or to the justices or corporation, or reputed corporation thereof, save that it shall be lawful that an Order in Council be made for uniting Havering-atte-Bower to the county of Essex, in pursuance of the recited Act, upon the petition either of the justices of the said county or of the justices of Havering-atte-Bower.

19. Notwithstanding anything in this Act, the corporation referred to in the Alnwick Corporation Act, 1882, shall continue to be a corporation, and to hold and administer the property vested in such corporation at the passing of this Act, and shall apply the same for the purposes mentioned in the said Alnwick Corporation Act, 1882, and the maintenance as heretofore of the corporation schools, or for any other public or charitable purposes ; and the provisions of this Act with respect to an inquiry by the Privy Council or the Local Government Board, or with respect to a scheme by the Local Government Board, shall not apply to Alnwick, and this Act shall not affect the provisions of the said Alnwick Corporation Act, 1882. Saving for Local Act relating to Alnwick.

20. Whereas, in Laugharne and Malmesbury, divers members of the corporation, whether called burgesses, landholders, or any other name, have the right to occupy without rent, or at low rents, certain property belonging to the corporation, and it is expedient to make provision with respect to such property : Be it enacted as follows : Saving as to Laugharne and Malmesbury.

- (1) In the event of a charter not being granted to Laugharne or Malmesbury (*a*), the property of the corporation of the place to which a charter is not so granted shall continue to be held, managed, and enjoyed as heretofore, in like manner as if a scheme of the Charity Commissioners, in pursuance of this Act, had provided for such holding, enjoyment, and management,

Sect. 20.

and for that purpose the corporation in the said place shall continue undissolved in like manner as if it were constituted by the said scheme :

- (2) The corporation of such place, subject to the approval of the Charity Commissioners, may sell all or any of the property of the corporation for the best price that may be got for the same; and, after compensating or saving the rights of any person in such property, whether existing or prospective, may pay the proceeds to any public authority in the locality, to be applied by such authority for the benefit of the inhabitants of the said place :
- (3) The provisions of this Act and of the Municipal Corporations Act, 1882, for saving the rights and interests of freemen and of persons who might have become freemen, shall extend to the rights and interests of persons who are, or if this Act had not passed, might have become landholders, assistant burgesses, or capital burgesses, in Malmesbury, and for that purpose freemen of Malmesbury may continue to be elected landholders, assistant burgesses, and capital burgesses.

(a) No charter has been granted to Laugharne. A charter was granted to Malmesbury on the 16th of September, 1886.

Saving for
Newport,
Pembroke.

21. Whereas it appears from the report of the Commissioners of 1876 that the office of mayor of Newport (Pembroke) is purely honorary, and that the corporation has no revenue and no municipal functions : Be it therefore enacted as follows :

Nothing in this Act shall be deemed to prevent the election of the mayor of Newport (Pembroke) as heretofore, or to dissolve the corporation of Newport (Pembroke), or deprive the lord of the manor or the burgesses of any tolls, rights of common, or other rights of a pecuniary value.

22. Whereas it appears from the Report of the Commissioners of 1876 that the corporation of Over has no revenue, and no municipal function, and that the mayor of Over, elected at the court leet, has a magisterial but no other jurisdiction: Be it therefore enacted as follows:

Sect. 22.

Saving for Over.

Nothing in this Act shall be deemed to prevent the holding of the court leet, and the election by such court of the mayor of Over as heretofore, but such mayor shall not, as such, have the jurisdiction of a justice, whether for criminal, licensing, or any other purpose.

23. Whereas it appears from the Report of the Commissioners of 1876 that the corporation of Altrincham has no municipal function, and that the mayor of Altrincham elected at the court leet has no jurisdiction: Be it therefore enacted as follows:

Saving for Altrincham.

Nothing in this Act shall be deemed to prevent the holding of the court leet, and the election by such court of the mayor of Altrincham as heretofore, but such mayor shall not have any jurisdiction, magisterial, municipal, or other.

24. Nothing in this Act shall deprive the lord of the manor of Corfe of any title enjoyed by him under any charter.

Saving for lord of the manor of Corfe Castle.

25. (1.) Nothing in this Act shall diminish the liability of the owner or occupier of any tenement to any rent or sum payable under any charter granted to any corporation mentioned in the schedules to this Act, and any person entitled to receive such rent or sum shall have the same right and remedy for recovering the same as prior to the passing of this Act, and also upon the abolition by this Act of the corporation under the charter shall have the power of such corporation or of any officer of such corporation to enforce payment of such rent or sum.

Saving for certain rights.

Sect. 25.

(2.) The provisions of this section and of the other parts of this Act for protecting the rights of persons interested shall have effect in favour of her Majesty, her heirs and successors, and of any body corporate, not being a corporation abolished by this Act, in like manner as if her Majesty, her heirs and successors, and such body corporate, were included in the term person.

(3.) Nothing in this Act shall affect the legal proceedings pending at the passing of this Act on the information of the Attorney-General against the corporation of the mayor and burgesses of Holt, and certain members of that corporation, and for the purpose of such proceedings the said corporation shall continue to be and to act as a corporation, and the mayor, bailiffs, and burgesses shall continue to be elected and appointed in like manner as if this Act had not passed, and any liabilities of such corporation under any judgment, decree, or order in such legal proceedings shall be deemed for the purposes of this Act to be liabilities of the corporation existing at the time of the abolition thereof.

**Repeal of
Acts and
charters.**

26. (1.) So much of any Act, law, charter, or usage as is inconsistent with this Act is hereby repealed (a).

(2.) The Act of the session of the seventeenth and eighteenth years of the reign of her present Majesty, chapter seventy-one, intituled "An Act to amend the law concerning the making of borough rates in boroughs not within the Municipal Corporation Acts," shall, on and after the first day of January one thousand eight hundred and eighty-six, or such later day, not after the first day of September one thousand eight hundred and eighty-six, as her Majesty in Council may appoint, be repealed, without prejudice to any rate previously made in pursuance of that Act, and without prejudice to the making of any rate which is by this Act authorized to be made; and any such rate may be made, levied, collected, and

applied, as nearly as may be, as if the said Act had not Sect. 26.
been repealed.

(a) Cf. sect. 1 of the repealed Municipal Corporations Act of 1835.

27. In this Act, unless the context otherwise re- Definitions.
quires,—

The expression “Privy Council” means the Lords of
her Majesty’s most honourable Privy Council, or any
two of them :

The expression “Committee of Council” means a
Committee of the said Lords :

The expression “Municipal Corporation Acts” has the 45 & 46 Vict.
same meaning as in the Municipal Corporations Act, c. 50.
1882 :

The expression “Charity Commissioners” means the
Charity Commissioners for England and Wales :

The expression “official trustees” means, as respects
real property the Official Trustee of Charity Lands,
and as respects all other property the Official Trustees 16 & 17 Vict.
of Charitable Funds, acting under the Charitable c. 137.
Trusts Acts, 1853 to 1869. 32 & 33 Vict.
c. 110.

Sched. I.

SCHEDULES.

[NOTE.--The places to which charters have been granted are marked with an asterisk. The places marked with a double asterisk are those which have been dealt with by the Local Government Board under sect. 7 of the present Act.]

FIRST SCHEDULE.

PLACES REPORTED ON BY THE COMMISSIONERS OF 1876.

PART I.

Places to which the Commissioners of 1876 consider that the Municipal Corporation Acts might be applied.

Places.	Corporation or reputed Corporation.
*Aldeburgh - -	"The bailiff and burgesses of the borough of Aldeburgh."
Alnwick - - -	"The chamberlains, common council, and freemen."
*Appleby - - -	"The mayor, aldermen, and capital burgesses."
*Bishop's Castle - -	"The bailiff and burgesses of the borough of Bishop's Castle."
Bradninch - - -	"The mayor and burgesses of the borough of Bradninch."
*Christchurch - -	"The mayor and burgesses of the borough of Christchurch."
*Henley-on-Thames -	"The mayor, aldermen, bridgemen, and burgesses of Henley-on-Thames."
*Kidwelly - - -	"The mayor, aldermen, bailiffs, and burgesses."
*Llanfyllin - - -	"The bailiffs and burgesses of the borough of Llanfyllin."
*Lostwithiel - - -	"The mayor and burgesses of Lostwithiel."
*Lydd - - - -	"The bailiffs, jurats, and commonalty of the town of Lydd."
*Malmesbury - - -	"The aldermen and burgesses of the borough of Malmesbury."
*Montgomery - - -	"The bailiffs and burgesses of the borough of Montgomery."
*New Romney - - -	"The mayor, jurats, and commonalty of the town and port of New Romney."
*Okehampton - - -	"The mayor and burgesses of the town and borough of Okehampton."
Over - - - - -	"The mayor of Over."
*Queenborough - -	"The mayor, jurats, bailiffs, and burgesses of Quinborowe."
Radnor - - - -	"The bailiff, aldermen, and burgesses of New Radnor."
*Saltash - - - -	"The mayor and free burgesses of the borough of Saltash."
*Sutton Coldfield -	"The warden and society of the royal town of Sutton Coldfield."
*Wareham - - - -	"The mayor, capital burgesses, and assistants of the borough of Wareham."
*Wilton - - - - -	"The mayor and burgesses of the borough of Wilton."
*Wokingham - - -	"The aldermen and burgesses of the town of Wokingham."
*Woodstock - - -	"The mayor and commonalty of the borough of New Woodstock."
Wootton Bassett -	"The mayor, aldermen, and burgesses of the borough of Wootton Bassett."

PART II.

Sched. I.

Places not mentioned by the Commissioners of 1876 as places to which the Municipal Corporation Acts might be applied.

Places.	Corporation or reputed Corporation.
Alresford - - -	" Bailiff and burgesses of New Alresford."
Altrincham - - -	" The mayor, aldermen, and burgesses of the borough of Altrincham."
Axbridge - - -	" The mayor, aldermen, and burgesses of the borough of Axbridge."
Berkeley - - -	" The mayor and aldermen of the borough of Berkeley."
Bovey Tracey - - -	" The mayor and freeholders of Bovey Tracey."
*Brackley - - -	" The mayor, aldermen, and burgesses of the borough of Brackley."
Brading - - -	" The bailiffs, burgesses, and commoners of the borough of Brading."
Camelford - - -	" The mayor and burgesses of the vill of Camelford."
Chipping Campden - - -	" The high steward, deputy steward, treasurer, senior bailiff, junior bailiff, and capital and inferior burgesses of Chipping Campden."
Corfe Castle - - -	" The mayor, barons, and inhabitants of Corfe."
*Cowbridge - - -	" The bailiffs, aldermen, and burgesses of the town of Cowbridge."
Dinas Mowddwy - - -	" The mayor and burgesses of Dinas Mowddwy."
Dunwich - - -	" The bailiffs, burgesses and commonalty of the borough and corporation of Dunwich."
Dursley - - -	" The bailiff and aldermen of Dursley."
East Looe - - -	" The mayor and free burgesses of the borough of East Looe."
Fordwich - - -	" The mayor, jurats, and commonalty of the town of Fordwich."
Garstang - - -	" The bailiff and burgesses of the borough of Garstang."
Great Dunmow - - -	" The bailiff and burgesses of the borough of Great Dunmow."
Harton - - -	" The portreeve and burgesses of Harton."
Havering-atte-Bower - - -	" The tenants and inhabitants of the lordship or manor of Havering-atte-Bower."
*Higham Ferrers - - -	" The mayor, aldermen, and burgesses of the borough and parish of Higham Ferrers."
Holt - - -	" The mayor and burgesses of Holt."
Ilchester - - -	" The bailiff and burgesses of Ilchester."
*Kenfig - - -	" The constable of the castle, portreeve, and burgesses of Kenfig."
Kilgerran - - -	" The portreeve and burgesses of Kilgerran."
*Lampeter - - -	" The burgesses of the borough of Lampeter Pont Stephen."
Langport Eastover - - -	" The portreeve and commonalty of the borough of Langport."
Laugharne - - -	" The portreeve and burgesses of the town and corporation of Laugharne."
Llantrissant - - -	" The constable of the castle, portreeve, aldermen, and burgesses of Llantrissant."
Loughor - - -	" The portreeve, aldermen, and burgesses of the borough of Loughor."
Marazion - - -	" The mayor, burgesses and inhabitants of the town of Marazion."

Sched. I.

Places.	Corporation or reputed Corporation.
Nevin - - -	"The mayor, bailiffs, and burgesses of the town and borough of Nevin."
*Newport (Salop) -	"The high steward, bailiffs, and burgesses of Newport."
Newport (Pembroke) -	"The mayor, aldermen, and burgesses of the borough of Newport."
Orford - - -	"The mayor and commonalty of the borough of Orford."
Overton - - -	"The burgesses of Overton."
Petersfield - - -	"The mayor of Petersfield."
Pevensey - - -	"The bailiff, jurats, and commonalty of the town and liberty of Pevensey."
Romney Marsh - - -	"The bailiff, jurats, and commonalty."
St. Clear's - - -	"The burgesses and commonalty of St. Clear's."
*Seaford - - -	"The bailiff, jurats, and freemen of the town and port of Seaford."
Thornbury - - -	"The bailiff and aldermen of Thornbury."
*Usk - - -	"The portreeve and burgesses of Usk."
Westbury - - -	"The mayor and burgesses of Westbury."
Wickwar - - -	"The mayor and aldermen of Wickwar."
Winchcomb - - -	"The bailiffs and burgesses of Winchcomb."
Winchelsea - - -	"The mayor, jurats, and commonalty of the ancient town of Winchelsea."
Wootton-under-Edge -	"The mayor and aldermen of Wootton-under-Edge."
Yarmouth (Isle of Wight).	"The mayor and chief burgesses of the borough of Yarmouth."

NOTE.—Since the report of the commissioners a charter has been granted to the town of Lewes.

SECOND SCHEDULE.

Places in which the Commissioners of 1876 report that a Municipal Corporation has not existed or has become virtually extinct.

PART I.

Places mentioned in paragraph (15) of the Report of the Commissioners of 1876 as places which either have not been Municipal or have long since ceased to be so :

Bala.	Fowey.	Presteign.
*Bangor.	Grampound.	Ruyton.
Bridlington.	Harlech.	St. David's.
Chipping Sodbury.	Hay.	Tavistock.
Criccieth.	Machynlleth.	Weobley.
Crickhowell.	Midhurst.	Wiston.
Farnham.	Newborough.	
Fishguard.	Newton (Lancashire).	

PART II.

Places mentioned in paragraph (16) of the Report of the Commissioners of 1876 as having had Municipal Corporations in 1835 :

Bossinny.	Llanelly.	Rhuddlan.
Caerwys.	Newtown (Isle of Wight).	Tregony.
Castle Rising.		West Looe.
Clun.	Plympton Earle.	

MISCELLANEOUS PROVISIONS.

THE COPYHOLD ACT, 1858.

21 & 22 VICT. c. 94.

An Act to amend the Copyhold Acts.

[2nd August, 1858.]

15. In the case of a corporation or other lord of any manor holden upon any charitable trust within the provisions of "The Charitable Trusts Act, 1853," or "Charitable Trusts Amendment Act, 1855," not authorized to make an absolute sale otherwise than under the provisions of the said last-mentioned Acts, or of the Copyhold Acts, the consideration money to be paid for the redemption or sale of any rent-charge, or as compensation for any enfranchisement, may, at the option of the lord, be paid into the hands of the Official Trustees of Charitable Funds acting under the said Charitable Trusts Acts, in trust for the charity to which the manor shall belong; and the principal moneys shall be applied by the trustees, under the order of the Charity Commissioners for England and Wales, for the purposes to which the said money, if paid into the Bank of England in the name of the Accountant-General of the Court of Chancery, would be applicable under the Copyhold Acts, and in the meantime shall be invested, and the dividends of such investments shall be applied, according to the provisions of the said Acts relating to charitable funds paid to such official trustees.

Enfranchise-
ment money
in cases of
charity
manors may
be paid to
Official
Trustees of
Charitable
Funds under
16 & 17 Vict.
c. 137 and
18 & 19 Vict.
c. 124.

THE RECREATION GROUNDS ACT, 1859.

22 VICT. c. 27.

An Act to facilitate Grants of Land to be made near populous Places for the use of regulated Recreation of Adults, and as Playgrounds for Children.

[19th April, 1859.]

WHEREAS the want of open public grounds for the resort and recreation of adults, and of playgrounds for children and youth, is much felt in the Metropolis and other populous places within this realm, and by reason of the great and continuous increase of the population and extension of towns such evil is seriously increasing, and it is desirable to provide a remedy for the same :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Lands may be conveyed to trustees, to be held by them as public recreation grounds, &c.

1. Any lands may be lawfully conveyed to trustees, to be held by them as open public grounds for the resort and recreation of adults, and as playgrounds for children and youth, or either of such purposes, and for any estate, and subject to any reservation, restrictions, and conditions which the donor or grantor may think fit: But this enactment shall not extend to authorize any lands to be so conveyed for any greater estate or interest than the donor or grantor would, independently of this Act, have power to dispose of.

Form of conveyance.

2. Any such conveyance of land to trustees may be in the following form, subject to any modification thereof which the case may require :

" I, A. B., do hereby convey and grant to _____, as trustees for public ground for the parish [or parishes] of _____ [here describe the lands conveyed or granted], to be

held by them as public ground for the purposes of 'The Recreation Grounds Act, 1859.' ” Sect. 2.

And it is hereby enacted, that the grant or conveyance of such lands shall not require enrolment, nor to be by indenture, and shall be valid, although the donor or grantor shall die within twelve calendar months after the making of such grant, any of the provisions of the Act passed in the ninth year of the reign of King George the Second, chapter thirty-six, to the contrary notwithstanding.

3. With respect to lands belonging to any municipal corporation, such grant may be lawfully made by the body corporate, with the consent of the Commissioners of her Majesty's Treasury, signified by their executing the deed of conveyance. How lands of municipal corporations may be granted.

4. With respect to lands belonging to any parish, such grant may and shall be made by the trustees or feoffees (if there shall be such), or otherwise by the churchwardens and overseers of the parish, in pursuance of a resolution for that purpose of the vestry or other body having the management of the affairs of such parish, passed in meeting duly assembled for the purpose, and with the approbation of the Poor Law Board, to be testified by their seal being affixed to the deed of conveyance. How lands of parishes may be granted.

5. With respect to the appointment of trustees for holding any such grounds for the purpose aforesaid, the lord of any manor, or the churchwardens of any parish, or the overseers of the poor of any parish or township, or all or any of such persons to whom lands shall have been conveyed as aforesaid, shall be a body corporate for taking, holding, and disposing of such grounds, and instituting, maintaining, and defending any proceedings relating thereto; but the management and direction of Appointment of trustees.

Managers and directors.

Sect. 5. the same shall be and remain in such persons as may be named in the deed or conveyance thereof; and in case no such persons shall be so named, or there shall be a failure of such managers and directors, the Charity Commissioners for England and Wales shall have power to settle a scheme for the appointment of the managers and directors.

Managers and directors may make and enforce byelaws and regulations, subject to the approval of said Commissioners.

6. The managers and directors may from time to time make and enforce any such byelaws, orders and regulations for the management, preservation, disposition, and care of the said grounds, and the government of all persons using or frequenting the same, as shall be approved by the said Commissioners and in accordance with the conditions of the grant; and no byelaws, orders, or regulations in any manner restricting the public use or enjoyment of the said grounds shall be valid unless sanctioned with such approbation.

Personal property may be bequeathed for purposes of grounds.

7. It shall be lawful for any person to bequeath any personal property, not exceeding one thousand pounds in amount, for the purpose of defraying the expenses of purchasing, preparing, maintaining, and preserving such grounds for the purposes aforesaid, and ornamenting the same.

Extent of Act, and short title.

8. This Act shall extend to England and Ireland only, and may be cited for all purposes by the title of "The Recreation Grounds Act, 1859."

THE COMMONS ACT, 1876.

39 & 40 VICT. c. 56.

An Act for facilitating the Regulation and Improvement of Commons, and for amending the Acts relating to the Inclosure of Commons. [11th August, 1876.]

19. Whereas by several awards made under the authority of Inclosure Acts prior to the year one thousand eight hundred and forty-five, fuel allotments for the poor have been set out and awarded, and vested in divers persons and bodies of persons as trustees of such allotments :

Definition of power of Charity Commissioners in certain cases.

And whereas under the provisions of the Inclosure Acts, 1845 to 1868, and the several Acts of Parliament and awards made thereunder, allotments for recreation grounds and field gardens have been set out and awarded to the churchwardens and overseers of parishes and other persons:

And whereas power exists or is claimed under divers Acts of Parliament, to divert such allotments from the uses declared by Parliament respecting the same: Be it enacted, that after the passing of this Act, notwithstanding anything in any other Act contained, it shall not be lawful (save as hereinafter mentioned) to authorize the use of or to use any such allotment, or any part thereof, for any other purpose than those declared concerning the same by the Act of Parliament and award, or either of them, under which the same has been set out: Provided, that it shall be lawful for the Charity Commissioners for England and Wales, in the exercise of their ordinary jurisdiction under the Charitable Trusts Acts, upon the application of the trustees of any fuel allotment, to authorize the use of such fuel allotment as a recreation ground and field gardens, or for either of those purposes, and to make an order under the provisions of the Charitable Trusts Act, 1860, for the establishment of a scheme for the administration of such fuel allotment accordingly; and provided, that it shall be lawful for the said Charity Commissioners, on such appli-

23 & 24 Vict.
c. 136.

Sect. 19. cation as aforesaid, to authorize the exchange of any fuel allotment, or any part thereof, for land of equal value, situate within the parish or district for the benefit of the poor of which such allotment was set out, if the Commissioners are of opinion that by means of such exchange land better suited for the purpose for which such allotment was set out will be obtained.

THE PLACES OF WORSHIP SITES AMENDMENT ACT, 1882.

45 & 46 VICT. c. 21.

An Act to amend the Places of Worship Sites Act, 1873 (a).
[12th July, 1882.]

Conveyance
of lands by
corporations
and other
public bodies.

1. The Places of Worship Sites Act, 1873, shall be construed as extending to authorize any corporation, ecclesiastical or lay, whether sole or aggregate, and any officers, justices of the peace, trustees, or commissioners holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, to grant, convey or enfranchise for the purposes of the Act such quantity of land as therein mentioned: Provided as follows:

* * * * *

(d) Property held on trust for charitable purposes shall not be so granted without the consent of the Charity Commissioners for England and Wales.

(a) See further, *ante*, p. 438.

AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1883.

46 & 47 VICT. c. 61.

An Act for amending the Law relating to Agricultural Holdings in England. [25th August, 1883.]

Landlord,
charity
trustees, &c.

40. The powers by this Act conferred on a landlord in respect of charging the land shall not be exercised by trustees for ecclesiastical or charitable purposes, except with the previous approval in writing of the Charity Commissioners for England and Wales (a).

(a) Sect. 50 of the Agricultural Holdings (England) Act, 1875 (repealed by this Act), contained a similar provision.

APPENDIX I.

CHURCH BUILDING ACT (a).

43 GEO. III. c. 108.

An Act to promote the Building, Repairing, or otherwise providing of Churches and Chapels, and of Houses for the Residence of Ministers, and the providing of Churchyards and Glebes.

[27th July, 1803.]

WHEREAS a sufficient number of churches and chapels for the celebration of divine service, according to the rites and ceremonies of the United Church of England and Ireland, and of mansion houses with competent glebes for the residence of ministers officiating in such churches and chapels, is necessary towards the promotion of religion and morality: And whereas the same are either wholly wanting or materially deficient in many parts of England and Ireland: And whereas many well-disposed persons would be desirous of contributing towards the supply of such defects if they were enabled so to do in the manner herein-after directed: May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all and every person and persons having in his or their own right any estate or interest in possession, reversion, or contingency, of or in any lands or tenements, or of any property of or in any goods or chattels, shall have full power, licence, and authority at his and their will and pleasure, by deed enrolled in such manner and within such time as is directed in England by the statute made in the twenty-seventh year of the reign of King Henry the Eighth, and in Ireland by the statute made in the tenth year of the reign of King Charles the First, for enrolment of bargains and sales, or by his, her, or their last will or testament in writing duly executed according to law, such deed or such will or testament being duly executed three calendar months at least before the death of such grantor or testator, including the days of the execution and death, to give and grant to and vest in any person or persons, or body politick or corporate, and their heirs and successors respectively, all such his, her, or their estate, interest, or property in such lands or tenements, not exceeding five acres, or goods and chattels, or any part or parts thereof, not exceeding in value five hundred pounds, for or towards the erecting, rebuilding, repairing, purchasing,

Persons by deed enrolled or will may give land not exceeding five acres, or goods and chattels not exceeding 500*l.* for the purposes of this Act.

(a) Repealed, so far as relates to Ireland, by 14 & 15 Vict. c. 71.

App. I.
43 Geo. III.
c. 108.

But such powers not to be exercise-able by persons within age or insane, &c.

Only one such gift shall be made by one person, and where it exceeds five acres or 500^l. the Lord Chancellor may, on petition, order it to be reduced, &c.

No glebe upwards of fifty acres shall be augmented with more than one acre.

Plots of land not exceeding one acre held in mortmain, lying convenient to be annexed to

or providing any church or chapel where the liturgy and rites of the said United Church are or shall be used or observed, or any mansion house for the residence of any minister of the said United Church officiating or to officiate in any such church or chapel, or of any out-buildings, offices, churchyard, or glebe for the same respectively, and to be for those purposes applied according to the will of the said benefactor in and by such deed enrolled or by such will or testament executed as aforesaid expressed, the consent and approbation of the ordinary being first obtained, and in default of such direction, limitation, or appointment, in such manner as shall be directed and appointed by the patron and ordinary, with the consent and approbation of the parson, vicar, or other incumbent; and such person and persons, bodies politick and corporate, and their heirs and successors respectively, shall have full capacity and ability to purchase, receive, take, hold, and enjoy, for the purposes aforesaid, as well from such persons as shall be so charitably disposed to give the same as from all other persons as shall be willing to sell or aliene to such person or persons, bodies politick or corporate, any lands or tenements, goods or chattels, without any licence or writ of ad quod damnum, the Statute of Mortmain or any other statute or law to the contrary notwithstanding: Provided always, that this Act or any thing therein contained, shall not extend to enable any person or persons, being within age or of non-sane memory, nor women covert without their husbands, to make any such gift, grant, or alienation, any thing in this Act contained to the contrary in any wise notwithstanding.

2. Provided also, and it is hereby further enacted, that no more than one such gift or devise shall be made by any one person, and that if any such gift or devise as aforesaid shall happen to exceed five acres in lands or tenements, or the value of five hundred pounds in goods and chattels, every such gift or devise shall be good and valid to the extent aforesaid; and it shall be lawful for the Lord Chancellor for the time being, on petition, to make order for reducing every such gift or devise to and within the said limits, and for allotting such specifick five acres, and, if occasion should require, such specifick goods and chattels as in his judgment shall be most convenient, and to make such further order touching the premises as to him shall appear just and reasonable.

3. Provided also, that no glebe containing upwards of fifty acres shall be augmented with more than one acre under or by virtue of this Act; but that the excess, if any, given or devised for the purpose of such augmentation shall be reduced in manner aforesaid by the said Lord Chancellor, and such order thereupon shall be by him made as hereinbefore is directed in the case of an excess beyond five acres.

4. And whereas it often happens that small plots of land held in mortmain lie convenient to be annexed to some such church or chapel, or house of residence, as aforesaid, or to some churchyard, or curtilage thereto belonging, or convenient to be employed as the scite of some such church or chapel or house to be hereafter erected, and for the necessary and commodious use and enjoyment thereof, and that they might be so employed to the advantage of the publick, and without detriment to the proprietors thereof, if they were enabled to give and grant the same for the purposes aforesaid; Be it therefore further enacted, that it shall be lawful for every body politick or corporate, sole or aggregate, by deed inrolled as aforesaid, with or without confirmation, as the law may require, to give and grant, either by way of exchange or benefaction, any such small plot of land not exceeding

one acre, to any person or persons, body politick or corporate, his and their heirs and successors respectively, to be held, used, and applied for the purposes aforesaid; and such last-mentioned person and persons, bodies politick and corporate, and their heirs and successors respectively, shall have full capacity and ability, with consent of the incumbent, patron, and ordinary, to take, hold, and enjoy such small plot of land for the purposes aforesaid, without any licence or writ of *ad quod damnum*, the Statute of Mortmain, or any other Act or law to the contrary notwithstanding.

5. Provided also, and it is hereby further enacted and declared, that in every parochial church or chapel hereafter to be erected ample provision shall be made for the decent and suitable accommodation of all persons, of what rank or degree soever, who may be entitled to resort to the same, and whose circumstances may render them unable to pay for such accommodations.

6. Provided also, that nothing in this Act contained shall be construed to take away or abridge any right of giving or devising which already exists in any person whatsoever.

App. I.
43 Geo. III.
c. 108.

some church, &c., may be granted either by way of exchange or benefaction for that purpose.

Accommodation to be provided for persons resorting to church, &c.

Rights of giving or devising not affected.

GRAMMAR SCHOOLS ACT.

3 & 4 VICT. c. 77.

An Act for improving the Condition and extending the Benefits of Grammar Schools. [7th August, 1840.]

Whereas there are in England and Wales many endowed schools, both of royal and private foundation, for the education of boys or youth wholly or principally in grammar; and the term "grammar" has been construed by Courts of Equity as having reference only to the dead languages, that is to say, Greek and Latin: And whereas such education, at the period when such schools or the greater part were founded, was supposed not only to be sufficient to qualify boys or youth for admission to the universities, with a view to the learned professions, but also necessary for preparing them for the superior trades and mercantile business: And whereas from the change of times and other causes such education, without instruction in other branches of literature and science, is now of less value to those who are entitled to avail themselves of such charitable foundations, whereby such schools have, in many instances, ceased to afford a substantial fulfilment of the intentions of the founders; and the system of education in such grammar schools ought therefore to be extended and rendered more generally beneficial, in order to afford such fulfilment; but the patrons, visitors, and governors thereof are generally unable of their own authority to establish any other system of education than is expressly provided for by the foundation, and her Majesty's Courts of Law and Equity are frequently unable to give adequate relief, and in no case but at considerable expense: And whereas, in consequence of changes which have taken place in the population of particular districts, it is necessary, for the purpose aforesaid, that in some cases the advantages of such grammar schools should be extended to boys other than those to whom by the terms of the foundation or the existing statutes the same is now limited, and that in other cases some restriction should be imposed, either with reference to the total number to be admitted into

Preamble.

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Courts of Equity may, whenever a question comes before them, make decrees or orders extending the system of education and the right of admission into any grammar school, and to establish schemes for the application of its revenues, having due regard to the intentions of the founder.

Before making such decrees the Courts shall consider the intentions of the founders, the state of school, &c.

Court not to dispense with

the school, or as regards their proficiency at the time when they may demand admission; but in this respect also the said patrons, visitors, and governors, and the Courts of Equity, are frequently without sufficient authority to make such extension or restriction: And whereas it is expedient that in certain cases grammar schools in the same place should be united: And whereas no remedy can be applied in the premises without the aid of Parliament: Be it therefore declared and enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that whenever, after the passing of this Act, any question may come under consideration in any of her Majesty's Courts of Equity concerning the system of education thereafter to be established in any grammar school, or the right of admission into the same, whether such question be already pending, or whether the same shall arise upon any information, petition, or other proceedings which may be now or at any time hereafter filed or instituted, for whatever cause the same may have been or may be instituted, according to the ordinary course of proceedings in Courts of Equity or under the provisions of this Act, it shall be lawful for the Court to make such decrees or orders as to the said Court shall seem expedient, as well for extending the system of education to other useful branches of literature and science in addition to or (subject to the provisions hereinafter contained) in lieu of the Greek and Latin languages, or such other instruction as may be required by the terms of the foundation or the then existing statutes, as also for extending or restricting the freedom or the right of admission to such school, by determining the number or the qualifications of boys who may thereafter be admissible thereto, as free scholars or otherwise, and for settling the terms of admission to and continuance in the same, and to establish such schemes for the application of the revenues of any such schools as may, in the opinion of the Court, be conducive to the rendering or maintaining such schools in the greatest degree efficient and useful, with due regard to the intentions of the respective founders and benefactors, and to declare at what period and upon what event such decrees or orders, or any directions contained therein shall be brought into operation; and that such decrees and orders shall have force and effect notwithstanding any provisions contained in the instruments of foundation, endowment or benefaction, or in the then existing statutes: Provided always, that in case there shall be any special visitor appointed by the founder, or other competent authority, opportunity shall be given to such visitor to be heard on the matters in question, in such manner as the Court shall think proper, previously to the making such decrees or orders.

2. Provided always, and be it enacted, that in making any such decree or order the Court shall consider and have regard to the intentions of the founders and benefactors of every such grammar school, the nature and extent of the foundation and endowment, the rights of parties interested therein, the statutes by which the same has been hitherto governed, the character of the instruction theretofore afforded therein, and the existing state and condition of the said school, and also the condition, rank, and number of the children entitled to and capable of enjoying the privilege of the said school, and of those who may become so capable if any extended or different system of education, or any extension of the right of admission to the said school, or any new statutes, shall be established.

3. Provided also, and be it enacted, that, unless it shall be found

necessary from the insufficiency of the revenues of any grammar school, nothing in this Act contained shall be construed as authorizing the Court to dispense with the teaching of Latin and Greek, or either of such languages, now required to be taught, or to treat such instruction otherwise than as the principal object of the foundation; nor to dispense with any statute or provision now existing, so far as relates to the qualification of any schoolmaster or under master.

4. Provided also, and be it enacted, that in extending, as hereinbefore provided, the system of education or the right of admission into any grammar school in which the teaching of Greek or Latin shall be still retained, the Court shall not allow of the admission of children of an earlier age or of less proficiency than may be required by the foundation or existing statutes, or may be necessary to show that the children are of capacity to profit by the kind of education designed by the founder.

5. Provided also, and be it enacted, that whenever, on account of the insufficiency of the revenues of any grammar school, the Court shall think fit to dispense with the teaching of Greek or Latin, the Court shall prescribe such a course of instruction, and shall require such qualifications in the children at the period of their admission, as will tend to maintain the character of the school as nearly as, with reference to the amount of the revenues, it may be analogous to that which was contemplated by the founder; and that whenever, on the like account, the Court shall think fit to dispense with any statute or provision as far as relates to the qualification of any schoolmaster or under master, the Court shall substitute such qualification as will provide for every object implied in the original qualification, which may be capable of being retained notwithstanding such insufficiency of the revenues.

6. Provided also, and be it enacted, that in case the appointment of any additional schoolmaster or under master shall be found necessary for the purpose of carrying the objects of this Act into execution, the Court shall require the same qualification in such new schoolmaster or under master respectively as may be required by the existing statutes in the present schoolmaster or under master, except such as may be wholly referable to their capability of giving instruction in any particular branch of education; but that every other qualification implied in the qualification of the original schoolmaster or under master, and capable of being retained, shall be retained and required in such new schoolmaster or under master; and the Court shall also in such case declare in whom the appointment of such new schoolmaster or under master shall be vested, so as to preserve as far as may be the existing rights of all parties with regard to patronage.

7. Provided also, and be it enacted, that although under the provisions hereinbefore contained the teaching of Greek or Latin in any grammar school may be dispensed with, every such school, and the masters thereof, shall be still considered as grammar schools and grammar schoolmasters, and shall continue subject to the jurisdiction of the ordinary as heretofore; and that no person shall be authorized to exercise the office of schoolmaster or under master therein without having such licence, or without having made such oath, declaration, or subscription as may be required by law of the schoolmasters or under masters respectively of other grammar schools.

8. Provided also, and be it enacted, that whenever the Court shall think fit to extend the freedom of or the right of admission into any grammar school, such extension shall be so qualified by the Court that

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Latin and Greek, or the qualifications of the masters, unless revenues are insufficient.

Standard of admission not to be lowered where Greek and Latin is retained.

Where the teaching of Greek and Latin is dispensed with, &c. analogous instruction to be substituted, &c.

Qualifications and right of appointment of additional schoolmasters.

Schools to be grammar schools though Greek and Latin dispensed with, and masters to continue subject to the ordinary, &c.

Extension of right of admission not to prejudice

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existing
rights.

Where several schools are in one place, and the revenues of any are insufficient, they may be united.

Consents
necessary to
union.

Present schoolmasters not to be affected without their consent, but to be at liberty to resign on receiving pensions.

Appointment of future masters to be subject to any new statutes made under this Act.

Term for lapse of right of nomination of master shall be computed from time of settling the new statutes, &c.

none of the boys who are by the foundation or existing statutes entitled to such privilege shall be excluded by the admission of other boys into the said school, either from such school itself or from competition for any exhibition or other advantage connected therewith.

9. And be it enacted, that in case there shall be in any city, town, or place, any grammar school or grammar schools the revenues of which shall of themselves be insufficient to admit of the purposes of their founder or founders being effected, but which revenues if joined to the revenues of any other grammar school or grammar schools in the same city, town, or place, would afford the means of effecting the purposes of the founders of such several schools, it shall be lawful for the Court of Chancery to direct such schools to be united, and the revenues of the schools so united to be applied to the support of one school to be formed by such union, and which shall be carried on according to a scheme to be settled for that purpose under the direction of the said Court: Provided always, that before application shall be made to the Court to direct such union, the consent of the visitor, patron, and governors of every school to be affected thereby shall be first obtained.

10. Provided always, and be it enacted, that no new statutes affecting the duties or emoluments of any schoolmaster or under master shall be brought into operation as regards any such master who shall have been appointed previously to the passing of this Act without his consent in writing (a); but that in case any such schoolmaster or under master as last aforesaid shall be unwilling to give such consent as aforesaid, and shall be desirous or willing to resign his office on receiving a retiring pension, it shall be lawful for the governors, if there be any competent to act, or if there be no such governors, for the visitor, to assign to such master such pension as to them or him (as the case may be) shall seem reasonable from the time of his resignation, which pension, if approved as hereinafter mentioned, the trustees of the said school are hereby authorized and required to pay to him, or his order, according to the terms of such assignment.

11. And be it enacted, that any schoolmaster appointed in any grammar school after the passing of this Act shall receive his appointment subject to such new statutes as may be made and confirmed by the Court of Chancery, in pursuance of any proceedings which may be commenced under this Act, within six months after such vacancy shall have occurred (b).

12. Provided always, and be it enacted, that the term on the expiration of which any right of nomination or appointment of the master in any grammar school would otherwise lapse, shall, on the first avoidance of the office which shall occur after the passing of this Act, be computed from the time of the confirmation of the new statutes by which the school is to be in future governed, or, if no proceedings are pending for the purpose of having statutes established, from the expiration of the time within which such proceedings may be instituted, and not from the time of the avoidance.

(a) This proviso for many years after the passing of the Act rendered it practically of no great use except in cases when a vacancy occurred in the office of schoolmaster.

(b) According to this section, unless steps are taken to obtain a new scheme under the Act within six months after a vacancy, the new schoolmaster would have it in his power to prevent the extension of the system of education contemplated by the Act.

13. And whereas it is expedient that the discipline of grammar schools should be more fully enforced, Be it declared and enacted, that in all cases in which sufficient powers, to be exercised by way of visitation or otherwise, in respect of the discipline of such schools, shall already exist and be vested in any person or persons, it shall be lawful for such person or persons to exercise the same when and so often as they shall deem fit, either by themselves personally or by commission, without being first requested or required so to do, and likewise to direct such returns to be made by the masters of such schools, of the state thereof, of the books used therein, and of such other particulars as he or they may think proper, and also to order such examinations to be held into the proficiency of the scholars attending the same as to him or them may seem expedient.

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Where sufficient powers of discipline exist, the persons possessing them to be at liberty to exercise them, &c.

14. And be it enacted, that in all cases in which any person or persons, having authority, by way of visitation or otherwise, in respect of the discipline of any grammar school, may not have sufficient power properly to enforce the same, it shall be lawful for the Court of Chancery to order and direct that the powers of such person or persons shall be enlarged to such extent and in such manner, and subject to such provisions, as to the said Court shall seem fit.

Where such powers not sufficient, Court may enlarge them.

15. And be it enacted, that in all cases in which no authority to be exercised by way of visitation in respect of the discipline of any grammar school is now vested in any known person or persons, it shall be lawful for the bishop of the diocese wherein the same is locally situated to apply to the Court of Chancery, stating the same; and the said Court shall have power, if it so think fit, to order that the said bishop shall be at liberty to visit and regulate the said school in respect of the discipline thereof, but not further or otherwise.

Where no such powers, Court may create them.

16. And be it enacted, that in the event of the person or persons by whom powers of visitation in respect of the discipline of any grammar school ought to be exercised, refusing or neglecting so to do within a reasonable time after the same ought to be exercised, or in the event of its being uncertain in whom the right to exercise such powers is vested, such powers shall be exercised *pro hac vice* by some person specially appointed by the authority of the Court of Chancery, on application made by any person or persons interested in such grammar school: Provided always, that nothing herein contained shall exempt any visitor from being compelled by any process to which he is now amenable to perform any act which he is now compellable to perform.

Court of Chancery may substitute a person to act *pro hac vice* in certain cases.

17. And whereas it is expedient to provide for the more easy removal of unfit and improper masters, Be it declared and enacted, that it shall be lawful for the Court of Chancery to empower the person or persons having powers of visitation in respect of the discipline of any grammar school, or who shall be specially appointed to exercise the same under this Act, and the governors, or either of them, after such inquiries and by such mode of proceeding as the Court shall direct, to remove any master of any grammar school who has been negligent in the discharge of his duties, or who is unfit or incompetent to discharge them properly and efficiently, either from immoral conduct, incapacity, age, or from any other infirmity or cause whatsoever.

Court of Chancery may authorize removal of masters.

18. Provided always, and be it enacted, that in case the cause for which any master be removed shall be incompetency from age or other infirmity, it shall be lawful for the said governors, with the approbation of the visitor, to assign to the use of such master any portion of the annual revenues of the said grammar school in one or more donations, or by way of annuity determinable on the death of

Power in certain cases to assign retiring pension.

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3 & 4 Vict.
c. 77.

Premises held
over by mas-
ters dismissed
or ceasing to
hold office, to
be recovered
in a summary
way.

1 & 2 Vict.
c. 74.

Master shall
not set up
title, &c.

Applications
to Court to
be made by
petition,
under 52 G. 3,
c. 101.

such master, or on any other specified event during his life, or to assign to him any part of the estate of the said grammar school for his occupation for a term determinable in like manner; provided that there shall remain sufficient means to provide for the efficient performance of the duties which belong to the office from which such master shall be removed.

19. And for the more speedy and effectual recovery of the possession of any premises belonging to any grammar school which the master who shall have been dismissed as aforesaid, or any person who shall have ceased to be master, shall hold over after his dismissal or ceasing to be master, except under such assignment as may have been made under the provisions of this Act, the term of such assignment being still unexpired, and the premises assigned being in the actual occupation of the master so dismissed or ceased to be master, be it enacted, that when and as often as any master holding any schoolroom, school-house, or any other house, land, or tenement, by virtue of his office, or as tenant or otherwise under the trustees of the said grammar school, except on lease for a term of years still unexpired, shall have been dismissed as aforesaid, or shall have ceased to be master, and such master, or (if he shall not actually occupy the premises or shall only occupy a part thereof) any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, except such as are hereinbefore excepted, within the space of three months after such dismissal or ceasing to be master, it shall be lawful for justices of the peace acting for the district or division in which such premises or any part thereof are situated, in petty sessions assembled, or any two of them, and they are hereby required, on the complaint of the said trustees or their agents, and on the production of an order of the Court of Chancery declaring such master to have been duly dismissed or to have ceased to be master, to issue a warrant, under their hands and seals, to the constables and peace officers of the said district or division, commanding them, within a period to be therein named, not less than ten nor more than twenty-one clear days from the date of such warrant, to enter into the premises, and give possession of the same to the said trustees or their agents, in such manner as any justices of the peace are empowered to give possession of any premises to any landlord or his agent under an Act passed in the session of Parliament held in the first and second years of the reign of her present Majesty, intituled "An Act to facilitate the Recovery of Possession of Tenements after due Determination of the Tenancy."

20. Provided always, and be it enacted, that nothing in this Act or the said recited Act shall extend or be construed to extend to enable any master so dismissed, or ceasing to be master as aforesaid, to call in question the validity of such dismissal, provided that the same shall have proceeded from the persons authorized to order the same, after such inquiries and by such mode of proceeding as required in that behalf, or to call in question the title of the trustees to possession of any premises of which such master shall have become possessed by virtue of his late office, or as tenant or otherwise under the trustees of the said grammar school for the time being.

21. And whereas it is expedient to facilitate applications to the Court of Chancery under this Act, Be it enacted, that all applications may be heard and determined and all powers given by this Act to the Court of Chancery may be exercised in cases brought before such

Court by petition only, such petitions to be presented, heard, and determined according to the provisions of an Act passed in the fifty-second year of the reign of his late Majesty King George the Third, intituled "An Act to provide a summary Remedy in Cases of Abuses of Trusts created for Charitable Purposes."

22. And be it enacted, that in every case in which the patronage of any grammar school, or right of appointing the schoolmaster or under master thereof, is vested in the Crown, the Lord High Chancellor, or the Chancellor of the Duchy of Lancaster in respect of any grammar school within the county palatine of Lancaster, shall be considered as the patron of such grammar school for the purposes of this Act.

23. And be it enacted, that the powers and authorities hereinbefore given to the Lord High Chancellor shall and may be exercised in like manner by and are hereby given to the Lord Keeper or Lords Commissioners for the custody of the great seal respectively for the time being.

24. Provided always, and be it enacted, that neither this Act nor anything therein contained shall be any way prejudicial or hurtful to the jurisdiction or power of the ordinary; but that he may lawfully execute and perform the same as heretofore he might according to the statutes, common law, and canons of this realm, and also as far as he may be further empowered by this Act; and that this Act shall not be construed as extending to any of the following institutions; (that is to say,) to the Universities of Oxford or Cambridge, or to any college or hall within the same, or to the University of London, or any colleges connected therewith, or to the University of Durham, or to the colleges of Saint David's or Saint Bee's, or the grammar schools of Westminster, Eton, Winchester, Harrow, Charter House, Rugby, Merchant Taylors, Saint Paul's, Christ's Hospital, Birmingham, Manchester, or Macclesfield, or Louth, or such schools as form part of any cathedral or collegiate church.

25. And be it enacted, that in the construction and for the purposes of this Act, unless there be something in the subject or context repugnant to such construction, the word "grammar school" shall mean and include all endowed schools, whether of royal or other foundation, founded, endowed, or maintained for the purpose of teaching Latin and Greek, or either of such languages, whether in the instrument of foundation or endowment, or in the statutes or decree of any Court of Record, or in any Act of Parliament establishing such school, or in any other evidences or documents, such instruction shall be expressly described, or shall be described by the word "grammar," or any other form of expression which is or may be construed as intending Greek or Latin, and whether by such evidences or documents as aforesaid, or in practice, such instruction be limited exclusively to Greek or Latin, or extended to both such languages, or to any other branch or branches of literature or science in addition to them or either of them; and that the words "grammar school" shall not include schools not endowed, but shall mean and include all endowed schools which may be grammar schools by reputation, and all other charitable institutions and trusts, so far as the same may be for the purpose of providing such instruction as aforesaid; that the word "visitor" shall mean and include any person or persons in whom shall be vested, solely or jointly, the whole or such portion of the visitatorial power as regards the subject of the enactment or provision, or any powers in regard to the discipline or making of new statutes in any school; that the word "governors" shall mean and include all persons or corporations,

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If Crown is patron, Lord High Chancellor or Chancellor of Duchy of Lancaster shall act.

Powers of Lord Chancellor to be exercised by Lord Keeper, &c.

Saving of rights of ordinary.

Certain foundations exempted from this Act.

Construction of terms.

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3 & 4 Viet.
c. 77.

whether sole or aggregate, by whatever name they may be styled, who may respectively have the government, management, or conduct of any grammar school, whether they have also any control over the revenues of the school as trustees or not; that the word "trustees" shall mean and include all persons and corporations, sole or aggregate, by whatever name they may be styled, who shall have the management, disposal, and control over the revenues of any grammar school, whether the property be actually vested in them or not; that the word "statutes" shall mean and include all written rules and regulations by which the school, schoolmasters, or scholars are, shall, or ought to be governed, whether such rules or regulations are comprised in, incorporated with, or authorized by any royal or other charter, or other instrument of foundation, endowment, or benefaction, or declared or confirmed by Act of Parliament, or by decree of any court of record, and also all rules and regulations which shall be unwritten, and established only by usage or reputation; that the word "school-master" shall mean and include the head master only, and the word "under master" every master, usher, or assistant in any school except the head master; and that the word "master" shall mean and include as well any head master as under master; that the words "discipline" or "management" of a school shall mean and include all matters respecting the conduct of the masters or scholars, the method and times of teaching, the examination into the proficiency of the scholars of any school, and the ordering of returns or reports with reference to such particulars, or any of them; and that any word importing the singular number only shall mean and include several persons or things as well as one person or thing, and the converse.

Act may be
amended this
session.

28. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this present session of Parliament (a).

THE LANDS CLAUSES CONSOLIDATION ACT, 1845.

8 & 9 VICT. c. 18.

An Act for consolidating in one Act certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a Public Nature. [8th May, 1845.]

* * * * *

Interpreta-
tions in this
and the
special Act:

3. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

* * * * *

"Owner:"

Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any Act shall be authorized or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking:

(a) Repealed by the Stat. Law Rev. Act, 1874 (No. 2).

The expression "the bank" shall mean the Bank of England where the same shall relate to monies to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to monies to be paid or deposited in respect of Lands situate in Ireland.

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c. 18.

"the bank:"

* * * * *

And with respect to the purchase of lands by agreement, be it enacted as follows:

*Purchase of
Lands by
agreement.*

8. Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorized to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

Power to
purchase
lands by
agreement.

7. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life or for lives and years, or for years or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

Parties under
disability
enabled to
sell and
convey.

8. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may

Parties under
disability to
exercise other
powers.

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c. 18.

*Purchase of
Lands by
Agreement.*

Amount of
compensation
in case of
parties under
disability to
be ascertained
by valuation,
and paid into
the bank.

Where vendor
absolutely en-
titled, lands
may be sold
on chief
rents.

Payment of
rents to be
charged on
tolls.

Power to
purchase
lands required
for additional
accommoda-
tion.

Authority to
sell and re-
purchase such
lands.

lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

9. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall, upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not, then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned.

10. It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorized to be purchased for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rentcharge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum.

11. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the Superior Courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

12. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorized to be purchased for extraordinary purposes.

13. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity (a).

(a) No particular quantity is prescribed by the Charit. Trusts Act, 1853.

14. The promoters of the undertaking shall not, by virtue of the power to purchase lands for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them (b).

15. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the Commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily (c).

* * * * *

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:

69. If the purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank, in the name and with the privity of the Accountant General of the Court of Chancery in England if the same relate to lands in England or Wales, or the Accountant General of the Court of Exchequer in Ireland if the same relate to lands in Ireland, to be placed to the account there of such accountant general, ex parte the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating monies paid into the said Courts; and such monies shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,)

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

**App. I.
8 & 9 Vict.
c. 18.**

*Purchase of
Lands by
Agreement.*

Restraint on
purchase from
incapacitated
persons.

Municipal
corporations
not to sell
without the
approbation
of the Trea-
sury.

*Application of
Compensation.*

Purchase-
money or
compensation
payable to
parties under
disability
amounting to
200*l.* to be
deposited in
the bank.

*Application
of monies
deposited.*

(b) See note to last section.

(c) This reservation is inapplicable in the case of the Charit. Trusts Act, 1853.

App. I.
8 & 9 Vict.
c. 18.

*Application of
Compensation.*

Order for ap-
plication and
investment
meanwhile.

Sums from
20l. to 200l.
to be de-
posited or
paid to
trustees.

Sums not
exceeding 20l.
to be paid to
parties.

All sums
payable under
contract with
persons not
absolutely
entitled, to be
paid into
bank, or to
trustees.

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled to such money.

70. Such money may be so applied as aforesaid upon an order of the Court of Chancery in England or the Court of Exchequer in Ireland, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said accountant general in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

71. If such purchase money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the Court for that purpose.

72. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable for their own use and benefit, or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

73. All sums of money exceeding twenty pounds, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands; but all such monies shall be deemed to have been contracted to be paid for and on account

of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery in England or the Court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

74. Where any purchase money or compensation paid into the bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

75. Upon deposit in the bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

76. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the

App. I.
8 & 9 Vict.
c. 18.

*Application of
Compensation.*

Court of
Chancery
may direct
application of
money in
respect of
leases or re-
versions as
they may
think just.

Upon deposit
being made,
the owners of
the lands to
convey, or in
default the
lands to vest
in the pro-
motors of the
undertaking
upon a deed
poll being
executed.

Where parties
refuse to con-

App. I.
8 & 9 Vict.
c. 18.

*Application of
Compensation.*

vey, or do not
show title, or
cannot be
found, the
purchase
money to be
deposited.

Upon deposit
being made a
receipt to be
given, and
the lands to
vest in the
promoters
upon a deed
poll being
executed.

Application
of monies so
deposited.

Party in pos-
session to be
deemed the
owner.

purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the Accountant General of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said court.

77. Upon any such deposit of money as last aforesaid being made the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

78. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England or the Court of Exchequer in Ireland, may, in a summary way, as to such Court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such Court shall seem fit.

79. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the Court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed

entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

80. In all cases of monies deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of Court of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

App. I.
8 & 9 Vict.
c. 18.

*Application of
Compensation.*

Costs in cases
of money de-
posited.

And with respect to the conveyances of lands, be it enacted as follows: *Conveyances.*

81. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate, to merge all terms of years attended by express declaration, or by construction of law, on the estate of interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

Form of con-
veyances.

82. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and ex-

App. I.
8 & 9 Vict.
c. 18.

Conveyances.

Costs of conveyances.

Taxation of costs of conveyances.

penses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

83. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery or by a master in Chancery in Ireland, upon an order of the same Court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said Court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

* * * * *

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

Form of Conveyance.

I of in consideration of the sum of paid to me [or, as the case may be, into the Bank of England [or Bank of Ireland], in the name and with the privity of the Accountant General of the Court of Chancery, ex parte "the promoters of the undertaking" [naming them], or to A.B. of and C.D. of two trustees appointed to receive the same], pursuant to the [here name the Special Act], by the [here name the company or other promoters of the undertaking], incorporated [or constituted] by the said Act, do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Act empowered to convey, to hold the premises to the said company [or other description], their successors and assigns, for ever, according to the true intent and meaning of the said Act. In witness whereof I have hereunto set my hand and seal, the day of in the year of our Lord .

SCHEDULE (B.)

Form of Conveyance on Chief Rent.

I of in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "the promoters of the undertaking" [naming them], incorporated [or constituted] by virtue of the [here name the special Act], do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [or

other description], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [*or other description*], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of _____ by equal quarterly [*or half-yearly, as agreed upon*], portions, henceforth, on the [*stating the days*], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the _____ day of _____ in the year of our Lord _____.

App. I.
8 & 9 Vict.
c. 18.

SERVICE OF NOTICES.

14 & 15 VICT. c. 56.

An Act to sanction the Service by Post of Notices relative to the Proceedings of certain Charitable Institutions, and to make further Provision as to the Service of such Notices in future.

[1st August, 1851.]

WHEREAS great inconvenience has been occasioned, and may be occasioned, to incorporated and other charitable institutions in England, by reason of courts, boards, and meetings of governors, members, or subscribers, and elections of presidents, patrons, treasurers, hospitaliers, masters, physicians, surgeons, and other officers of or to, and recipients of benefits conferred by, such institutions respectively, having from time to time taken place, of which the notices or some of them have been issued through the post, by the extreme difficulty of proving the service of such notices, and by want of sufficient provisions in the charters, statutes, laws, or rules of such institutions as to the service of notices thereby required to be given: And whereas it is expedient immediately to provide a remedy for the inconvenience and defects before mentioned: Be it therefore declared and enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 1, which was merely retrospective, was repealed by the Stat. Law Rev. Act, 1875.

2. That from and after the passing of this Act, all notices to the governors or members of or subscribers to any present or future charitable institution in England, whether incorporated or not, which by the charter, statutes, laws, or rules (as the case may be) of such institution for the time being are or shall be required to be given, may be served by the same being transmitted through the post, directed according to the address given in the list of the governors or members of or subscribers to such institution for the time being in use at the chief establishment thereof, in such time as to admit of their delivery in the due course of delivery by post at or before such period (if any) as is or shall be prescribed by the charter, statutes, laws, or rules (as the case may be) for the time being of such institution for the giving of such notices; and in proving such service it shall be sufficient to prove that such notice was so directed as aforesaid, and put into a general post office in such time as aforesaid; but so nevertheless that nothing in this Act contained shall be held to render invalid any personal service of any notice, or to render necessary to the effectual service of any notice any further act, matter, or thing than would have been required for the service thereof by the charter, statutes, laws, or rules for the time

Notices to governors, &c. of charities may be sent by post, &c.

App. I.
14 & 15 Vict.
c. 56.

being of the institution which the same shall concern, if this Act had not passed; and that no notice of any intended court, board, meeting, or election shall be required to be served, either by post or otherwise, on any governor or member of or subscriber to any such institution who shall not for the time being be within the United Kingdom, anything in any such charter, statutes, laws, or rules to the contrary notwithstanding.

THE ENDOWED SCHOOLS ACT, 1860.

23 & 24 VICT. c. 11.

An Act to amend the Law relating to Endowed Schools.

[31st March, 1860.]

WHEREAS it is expedient that some restrictions upon the government and teaching of certain endowed schools should be removed or modified: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Trustees of
endowed
schools may
make orders
for the ad-
mission of
children of
different de-
nominations.

1. It shall be lawful for the trustees or governors of every endowed school from time to time to make, and they shall be bound to make, such orders as, whilst they shall not interfere with the religious teaching of the other scholars as now fixed by statute or other legal requirement, and shall not authorize any religious teaching other than that previously afforded in the school, shall nevertheless provide for admitting to the benefits of the school the children of parents not in communion with the church, sect, or denomination according to the doctrines or formularies of which religious instruction is to be afforded under the endowment of the said school: Provided, that in the will or wills, deed or deeds, or other instrument or instruments regulating such endowment, nothing be contained expressly requiring the children educated under such endowment to learn or to be instructed according to the doctrines or formularies of such church, sect, or denomination.

Act not to
apply to
institutions
mentioned in
3 & 4 Vict. c.
77, s. 24, &c.,
nor to Scot-
land or
Ireland.

2. This Act shall not apply to any of the institutions mentioned in section twenty-four of the Act of the third and fourth of Victoria, chapter seventy-seven, entitled "An Act for Improving the Condition and Extending the Benefits of Grammar Schools," nor to any school established or to be established by or in union with or to be in union with the National Society for promoting the Education of the Poor in the principles of the Established Church, nor to any institution maintained wholly by voluntary subscriptions, or partly by voluntary subscriptions and partly by school payments, nor to Scotland or Ireland.

Short title.

3. This Act may be cited as "The Endowed Schools Act, 1860."

POOR ALLOTMENTS ACT, 1832.

2 & 3 WILL. IV. c. 42.

An Act to authorize (in Parishes enclosed under any Act of Parliament) the letting of the Poor Allotments in small Portions to industrious Cottagers.

[1st June, 1832.]

WHEREAS, in parishes enclosed under Acts of Parliament there are in many cases allotments made for the benefit of the poor, chiefly with a view to fuel, which are now comparatively useless and unproductive: And whereas it would tend much to the welfare and happiness of the poor if those allotments could be let at a fair rent, and in small

portions, to industrious cottagers of good character, while the distribution of fuel might be augmented by appropriating the said rents to the purchase of an additional quantity: Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall and may be lawful for the trustees of the said allotments, together with the churchwardens and overseers of the poor in parish vestry assembled, and they are hereby required, to let portions of any such allotment, not less than one-fourth of a statute acre (a), and not exceeding one such acre, to any one individual, according to their discretion, as a yearly occupation from Michaelmas to Michaelmas, (and at such rent as land of the same quality is usually let for in the same parish,) to such industrious cottagers of good character, being day labourers or journeymen legally settled in the said parish, and dwelling within or near its bounds, as shall apply for the same in the manner hereinafter mentioned.

2. Provided also, and be it further enacted, that the person hiring the same shall be held bound to cultivate it in such a manner as shall preserve the land in a due state of fertility.

3. And be it further enacted, that for the purpose of carrying this Act into effect a vestry shall be held in the first week in September in every year, of which ten days' notice shall be given in the usual manner, at which vestry the trustees of the said allotments may attend and vote, if they shall so think fit, and at which vestry, or some adjournment thereof, any industrious cottager of good character who may desire to rent such portion of land as aforesaid may apply for the same; and the said vestry are hereby required, taking into consideration the character and circumstances of the applicant, to determine the case, either by rejecting his application, or by making an order that he shall be permitted to occupy such portion of the poor allotment, being not less than one-fourth of a statute acre (a), nor exceeding one such acre, as the said vestry in their discretion shall determine, and upon the terms hereinbefore enacted; and the said order of vestry shall be held to all intents and purposes to be a sufficient title and authority to such applicant to enter into the occupation of such land at the time therein appointed.

4. Provided always, and be it further enacted, that the rent shall be reserved and payable to the churchwardens and overseers of the poor, on behalf of the vestry, in one gross sum for the whole year, and shall be paid to one or either of them at the end of the year's occupation.

5. And be it further enacted, that if the rent of such portion of land shall at any time be four weeks in arrear, or if at the end of any one year of occupation it shall be the opinion of the vestry that the land has not been duly cultivated, so as to fulfil the useful and benevolent purposes of this Act, then and in such case the churchwardens and overseers of the poor, or any or either of them, with the consent of the vestry, may serve a notice to quit upon the occupier of such portion of land; whereupon the said occupier shall deliver up possession of the same to the churchwardens and overseers aforesaid, or any or either of them, within one week after the said notice has been duly served upon him.

6. And be it further enacted, that if any person to whom such portion of land as aforesaid shall have been let for his or her own occupation, shall refuse to quit and to deliver up possession thereof when thereto required according to the terms of this Act, or if any

App. I.
2 & 3 Will. IV.
c. 42.

Trustees and parish officers in vestry assembled shall let portions of poor allotments to industrious cottagers.

Land to be duly cultivated.

Vestry to be held annually to receive applications.

Order of vestry to authorize occupation.

Payment of rent.

If rent is in arrear, or land not duly cultivated, tenant may be evicted.

Power to recover possession of land illegally held over or

(a) Repealed by sect. 10 of the Poor Allotments Management Act, 1873, *post*.

App. I.
2 & 3 Will. IV.
c. 32.

unlawfully
entered upon
by summary
process.

other person or persons shall unlawfully enter upon or take or hold possession of any such land, it shall be lawful for the churchwardens and overseers of the poor, or any or either of them, to exhibit a complaint against the person so in possession of such land before two of his Majesty's justices of the peace, who are hereby authorized and required to issue a summons under their hands and seals to the person against whom such complaint shall be made, to appear before them at a time and place appointed therein; and such justices are hereby required and empowered, upon the appearance of the defendant before them, or upon proof on oath that such summons has been duly served upon him, or left at his usual place of residence, or if there should have been any difficulty in finding such usual place of residence, then upon proof on oath of such difficulty, and that such summons has been affixed on the door of the parish church of the said parish in which such land is situated, and in any extra-parochial place on some public building or other conspicuous place therein, to proceed to hear and determine the matter of such complaint, and if they shall find and adjudge the same to be true, then by warrant under their hands and seals to cause possession of the land in question to be delivered to the churchwardens and overseers of the poor, or to some of them.

Arrears of
rent, how to
be recovered.

7. And be it further enacted, that all arrears of rent for the said portions of land shall be recoverable by the churchwardens and overseers of the poor, or any of them, on behalf of the vestry, by application to two of his Majesty's justices of the peace in petty sessions assembled, who shall thereupon summon the party complained against, and after hearing what he has to allege, should they find any rent to be due, they are required to issue a warrant under their hands and seals to levy the same upon the goods and chattels of the person from whom the said rent shall be due and owing.

Application
of rent.

8. And be it further enacted, that the rent of the said portions of land shall be applied by the vestry in the purchase of fuel, to be distributed in the winter season among the poor parishioners legally settled and resident in or near the said parish.

Allotments
may be let to
other persons,
and lands of
equal value
hired in
exchange, for
greater con-
venience of
cottagers.

9. And be it further enacted, that if any of the said allotments shall be found to lie at an inconvenient distance from the residences of the cottagers, it shall be lawful for the vestry by an order made to that effect to let such allotment, or any part thereof, for the best rent that can be procured for the same, and to hire in lieu thereof for the purposes of this Act land of equal value more favourably situated.

No habita-
tions to be
erected on the
portions let.
Powers, &c.
of this Act
shall extend
to lands en-
closed under
1 & 2 Will. 4,
c. 42 and
c. 69.

10. And be it further enacted, that no habitations shall be erected on the portions of land demised under this Act, either at the expense of the parish or by the individuals renting the same.

11. And whereas by two Acts of the first and second years of the reign of his present Majesty, intituled "An Act to amend An Act of the fifty-ninth year of his Majesty King George the Third, for the Relief and Employment of the Poor," and the other, intituled "An Act to enable the Churchwardens and Overseers to enclose lands belonging to the Crown, for the benefit of poor persons residing in the Parish in which such Crown land is situated," power is given, under certain restrictions, to enclose any quantity not exceeding fifty acres of waste land and Crown land respectively, for the use and benefit of the poor: Be it further enacted, that in any parish where such inclosure shall exist or shall hereafter take place, or where land shall in any other manner be found appropriated for the general benefit of the poor of any parish, then and in such cases the powers and provisions of this Act shall be held to apply, in so far as the same may be found applicable.

of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery in England or the Court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

74. Where any purchase money or compensation paid into the bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

75. Upon deposit in the bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

76. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the

App. I.
8 & 9 Vict.
c. 18.

*Application of
Compensation.*

Court of
Chancery
may direct
application of
money in
respect of
leases or re-
versions as
they may
think just.

Upon deposit
being made,
the owners of
the lands to
convey, or in
default the
lands to vest
in the pro-
motors of the
undertaking
upon a deed
poll being
executed.

Where parties
refuse to con-

- App. I.
36 & 37 Vict.
c. 19.**
- Appointment of committee to be made annually in August.**
- How meetings of appointing authority to be summoned.**
- Chairman of committee.**
- Adjournment of committee.**
- Quorum.**
- Vacancies in committees.**
- Inclosure Commissioners may appoint committee if authority fail to do so.**
- Repeal of provision of 2 Will. 4, c. 42.**
- Operation of notice to quit. 2 Will. 4, c. 42.**
5. The appointment of a committee in pursuance of this Act shall take place annually, and the person whose duty it is to summon meetings of any such allotment trustees or vestry as aforesaid shall summon within twelve months after the passing of this Act, for the purpose of appointing a committee as required by this Act, a first meeting of the allotment trustees or vestry of which he is the summoning officer, or meetings whereof he is authorized to summon, and to summon a meeting of the same body for the like purpose, to be held in the month of August in every year thereafter.
6. Any three trustees may summon a meeting of allotment trustees for the purposes of this Act by notice published in the manner in which notices of meetings of vestry are usually published in the place where the allotments or any parts thereof are situate of which such persons are trustees.
7. A committee appointed in pursuance of this Act may elect a chairman of its meetings, and if no chairman is elected, or if the chairman elected is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting. A committee may meet or adjourn as it thinks proper. The quorum of a committee shall consist of such number of members as may be prescribed by the authority that appointed it, or, if no number be prescribed, of three members. Every question at a meeting of a committee shall be determined by a majority of votes of the members present and voting on that question, and in case of an equal division of votes the chairman shall have a second or casting vote.
8. The proceedings of a committee shall not be invalidated by any vacancy or vacancies among its members. Any casual vacancy or vacancies occurring during the year of office in the members of a committee may be filled by the committee itself by the appointment of a person or persons qualified as a member or members of the appointing body to be appointed thereon.
9. If any authority required by this Act to appoint a committee fail to make such appointment within the time limited for making the same, the Inclosure Commissioners for England and Wales may, on the application of any person interested, appoint a committee of persons qualified as members of the body authorized by this Act to appoint the committee to be so appointed; and before making such appointment the Inclosure Commissioners shall give such notice of their intention to proceed on the application, and shall, by an assistant commissioner or otherwise, institute such local inquiry and hear such parties, and shall require such security from the applicant or upon the income of any allotment for payment of any expenses incurred by them as, having regard to the circumstances of the application, they think fit, and shall have power to call for the production of any award rate book or public document which they may think it necessary or proper to inspect.
10. *The provision in the hereinbefore mentioned Act of the second year of King William the Fourth, whereby no allotment is to be made of less than one quarter of an acre, is hereby repealed (a).*
11. The notice to quit mentioned in the fifth section of the last-mentioned Act of the second year of King William the Fourth may be given by a committee, under the hands of any three of its members, for any cause deemed by it sufficient and proper, and shall

(a) This section was repealed by the Stat. Law Rev. Act, 1883.

entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

80. In all cases of monies deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of Court of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

App. I.
8 & 9 Vict.
c. 18.

*Application of
Compensation.*

Costs in cases
of money de-
posited.

And with respect to the conveyances of lands, be it enacted as follows:

81. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate, to merge all terms of years attended by express declaration, or by construction of law, on the estate of interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

82. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and ex-

Conveyances.

Form of con-
veyances.

App. I.
8 & 9 Vict.
c. 18.

Conveyances.

Costs of conveyances.

Taxation of costs of conveyances.

penses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

83. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery or by a master in Chancery in Ireland, upon an order of the same Court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said Court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

* * * * *

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

Form of Conveyance.

I of in consideration of the sum of paid to me [or, as the case may be, into the Bank of England [or Bank of Ireland], in the name and with the privity of the Accountant General of the Court of Chancery, ex parte "the promoters of the undertaking" [naming them], or to A.B. of and C.D. of two trustees appointed to receive the same], pursuant to the [here name the Special Act], by the [here name the company or other promoters of the undertaking], incorporated [or constituted] by the said Act, do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Act empowered to convey, to hold the premises to the said company [or other description], their successors and assigns, for ever, according to the true intent and meaning of the said Act. In witness whereof I have hereunto set my hand and seal, the day of in the year of our Lord .

SCHEDULE (B.)

Form of Conveyance on Chief Rent.

I of in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "the promoters of the undertaking" [naming them], incorporated [or constituted] by virtue of the [here name the special Act], do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [or

other description], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [*or other description*], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of by equal quarterly [*or half-yearly, as agreed upon*], portions, henceforth, on the [*stating the days*], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the day of in the year of our Lord

App. I.
8 & 9 Vict.
c. 18.

SERVICE OF NOTICES.

14 & 15 VICT. c. 56.

An Act to sanction the Service by Post of Notices relative to the Proceedings of certain Charitable Institutions, and to make further Provision as to the Service of such Notices in future.

[1st August, 1851.]

WHEREAS great inconvenience has been occasioned, and may be occasioned, to incorporated and other charitable institutions in England, by reason of courts, boards, and meetings of governors, members, or subscribers, and elections of presidents, patrons, treasurers, hospitaliers, masters, physicians, surgeons, and other officers of or to, and recipients of benefits conferred by, such institutions respectively, having from time to time taken place, of which the notices or some of them have been issued through the post, by the extreme difficulty of proving the service of such notices, and by want of sufficient provisions in the charters, statutes, laws, or rules of such institutions as to the service of notices thereby required to be given: And whereas it is expedient immediately to provide a remedy for the inconvenience and defects before mentioned: Be it therefore declared and enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Sect. 1, which was merely retrospective, was repealed by the Stat. Law Rev. Act, 1875.

2. That from and after the passing of this Act, all notices to the governors or members of or subscribers to any present or future charitable institution in England, whether incorporated or not, which by the charter, statutes, laws, or rules (as the case may be) of such institution for the time being are or shall be required to be given, may be served by the same being transmitted through the post, directed according to the address given in the list of the governors or members of or subscribers to such institution for the time being in use at the chief establishment thereof, in such time as to admit of their delivery in the due course of delivery by post at or before such period (if any) as is or shall be prescribed by the charter, statutes, laws, or rules (as the case may be) for the time being of such institution for the giving of such notices; and in proving such service it shall be sufficient to prove that such notice was so directed as aforesaid, and put into a general post office in such time as aforesaid; but so nevertheless that nothing in this Act contained shall be held to render invalid any personal service of any notice, or to render necessary to the effectual service of any notice any further act, matter, or thing than would have been required for the service thereof by the charter, statutes, laws, or rules for the time

Notices to
governors, &c.
of charities
may be sent
by post, &c.

App. I.
45 & 46 Vict.
c. 50.

tinuance of which is not inconsistent with the provisions of the Municipal Corporations Act, 1835, or this Act, the council, on the day prescribed in any Act of Parliament as aforesaid, or in the deed or will by which the trust is created, for a new election, nomination, or appointment of trustees, or on which a new election, nomination, or appointment has usually been made, (and if there is no day prescribed or usually observed, then on or within ten days after the first of January in every year,) shall appoint the like number of members of the council, or as near as may be to the like number of members of the council, as there were theretofore members or nominees of the body corporate of the borough who in right of their office were such trustees, or charged with the execution of such powers, duties, and functions, in room of the members or nominees of the body corporate ceasing to be trustees, or ceasing to exercise such powers, duties, and functions by virtue of the Municipal Corporations Act, 1835.

(2.) In every case of extraordinary vacancy among the trustees or persons so appointed, the council shall forthwith appoint one other member of the council in the room of the person by whom the vacancy has been made, to hold his trust or office for such time as that person would regularly have held it.

PART XIII.

GENERAL.

Savings.

Saving for
universities.

257. Nothing in this Act shall—

- (1.) Affect the rights, privileges, duties, or liabilities of the chancellor, masters, and scholars of the universities of Oxford and Cambridge respectively, as by law possessed under the respective charters of those universities or otherwise; or
- (2.) Entitle the mayors of Oxford and Cambridge respectively to any precedence over the vice-chancellors of those universities respectively; or
- (3.) Entitle any person to be enrolled a citizen of the city of Oxford or burgess of the borough of Cambridge by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of those universities; or
- (4.) Compel any resident member of either of those universities to accept any office in or under the municipal corporation of Oxford or of Cambridge; or
- (5.) Authorize the levy of any rate within the precincts of those universities, or of any of the colleges or halls thereof, which now by law cannot be levied therein, or make either of those universities, or the members thereof, liable to any rate to which they are not liable to contribute at the commencement of this Act; or
- (6.) Authorize the transfer of any rights or liabilities by a local authority to the municipal corporation of the borough of Cambridge without the consent of the chancellor, master, and scholars of the university of Cambridge; or
- (7.) Affect the rights or privileges granted by charter or Act of Parliament to the university of Durham.

APPENDIX II.

OFFICIAL TRUSTEES OF CHARITABLE FUNDS.

REGULATIONS *made by the Treasury under Section 4 of the Charitable Trusts Act, 1887 (50 & 51 Vict. c. 49).*

I. These regulations shall take effect on and from 1st April 1889; and that date is hereby fixed as the date from and after which such officers of the Charity Commission as the Charity Commissioners, with the approval of the Treasury, shall have appointed, or shall appoint for that purpose, under section 4 (1) of the Charitable Trusts Act, 1887, shall be the Official Trustees of Charitable Funds, in lieu of the persons mentioned as such in the Charitable Trusts Amendment Act, 1855.

II. The term "securities" in these regulations includes all Government or other annuities or securities, and all stocks or shares, standing in, or to be transferred into, the name of the Official Trustees of Charitable Funds, in the books of the Bank of England, or of any other Company or Corporation; and the term "funds" includes money and securities standing or to be placed to the account, or standing in or to be transferred into the name, of the said Official Trustees of Charitable Funds.

III. All moneys to be held in trust by the Official Trustees of Charitable Funds in pursuance of the Orders of the Charity Commissioners, or of Orders of Court, or of other due authority, and all dividends and interest on securities standing in the name of the said Official Trustees, shall be paid to the cash account of the said Official Trustees at the Bank of England; and all securities to be held in trust by the Official Trustees of Charitable Funds (including such securities as may be purchased by way of investment of money standing to their account) shall be transferred to or inscribed in the name of the said Official Trustees in the books of the Bank of England or other Company or Corporation in whose books such securities are registered; and the Bank of England or other Company or Corporation shall make such transfer accordingly.

IV. All directions for the purchase, sale, or transfer of securities, and all orders to the Bank of England for the payment of money out of the account of the Official Trustees of Charitable Funds, shall be jointly signed by the Accountant, or in his absence the Assistant Accountant, and by one of the said Official Trustees, and be countersigned by one of the Charity Commissioners.

App. II.

V. In addition to the separate ledger accounts to be kept in the Accountant's branch of the office of the Charity Commissioners for each charity in respect of which any funds are placed to the account or in the name of the Official Trustees of Charitable Funds, general ledger accounts shall be kept showing the aggregate amounts of the receipts, payments, and transfers of the several descriptions of funds distributed over the separate charity accounts, and of the balances thereof.

VI. The business of the Accountant's branch of the office of the Charity Commissioners, in which the financial transactions in regard to the funds held in trust by the Official Trustees of Charitable Funds are conducted and recorded, shall be under the immediate control and responsibility of one of the said Official Trustees nominated for that purpose by the Charity Commissioners, with the concurrence of the Treasury.

VII. Subject to anything contained in these regulations, the books and forms of account to be used in connexion with the funds held in trust by the Official Trustees of Charitable Funds shall be such as may from time to time be prescribed or approved by or under the authority of the Treasury.

VIII. The annual account to be laid before Parliament under section 18 of the Charitable Trusts Act, 1860, shall be prepared in such form, as the Treasury may from time to time prescribe or approve.

IX. No direction for the transfer of securities shall be given by the Official Trustees of Charitable Funds, except in pursuance of an Order of the Charity Commissioners, authenticated in the manner prescribed by section 4 of the Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124).

R. E. WELBY.

Treasury, Whitehall,
27th March, 1889.

ACCOUNTS.

App. II.

(Charit. Trusts Amend. Act, 1855, s. 44.)

*Order of 29th July, 1884.*CHARITY COMMISSION,
29th July, 1884.

THE BOARD OF CHARITY COMMISSIONERS FOR ENGLAND AND WALES DO ORDER that, until further order, the yearly Accounts to be made out under Section 44 of the Charitable Trusts Act, 1855, by the Trustees or persons acting in the administration of Charities,

I. SHALL :—

(a) For every Charity regulated by a Scheme under the Endowed Schools Act, 1869, and Amending Acts, or under any of those Acts, and,

(b) For every other Charity, maintaining an Endowed School, such School not being part of another Charity,—

be made out so as to give the particulars of information specified in the Form numbered 105A (a), identified by the Official Seal of the said Board, and the signature of their Secretary.

II. AND SHALL, for every other Charity, be made out so as to give the particulars of information specified in the Form numbered 105 (b), or the Form numbered 106 (c), respectively identified as aforesaid.

Sealed by Order of the Board, this 29th day of July, 1884.

(Seal.) HENRY M. VANE, Secretary.

(a) *Infra.*

(b) *Post*, p. 792.

(c) *Post*, p. 794.

CHARITY COMMISSION FORMS.

Form No. 1.

(No. 105A) (a).

Form for Rendering Accounts.

STATEMENT of the ACCOUNTS of the CHARITY called ——— in the Parish of ——— in the County of ——— of which the following persons are the Trustees; namely,

[If the Charity is under the actual management of persons who are not Trustees, it should be stated in what capacity they act.]

For the Year ending on the ——— day of ——— 188 .

[This Form is drawn up so as to provide for all the particulars now required under the Charitable Trusts Acts, 1853 to 1869. Any parts of it not applicable to the case need not be further noticed. The names, professions, or qualities of the Trustees should be stated. Any details not provided for in this Form should be stated under other suitable heads. If there is more than one School the details as to each should be stated separately. If there is a fund set apart for any special purpose the receipts and payments of such fund should be set out under a separate heading. If there is more than one Governing Body, the accounts of each should be stated separately.]

(a) The numbers in brackets are those by which these forms are commonly known, and can be purchased. Any of the forms can be obtained at Shaw & Sons, in Fetter Lane, London, or at the office of the Charity Commission, in Whitehall.

[I.—GROSS

I.—GROSS INCOME arising or due from the ENDOWMENT for the year ending on the day of , 188 .

Description of Real Property.	Acreage.	Name of Tenant.	For what term leased or held.	Gross yearly Income.	Total.	Outgoings and Deductions from Gross Income.	Amount.	Net yearly Income.	Arrears due at commencement of Account.	Sums re-ceived.	Arrears due at close of Account.
N.B.—Any Buildings or other Real Estate kept in hand for the purposes of the Charity to be stated in the above Table.				Total..							
Description of Stock in the Public Funds.	Amount. £ s. d.	Names and Descriptions of Persons in whose Names invested.		Gross yearly Income.	Total..						
Other Personality, including Securities for Money and Deposits in Savings or other Banks.	Amount.	Names and Descriptions of Persons to whom Securities made or Deposits due.		Gross yearly Income.	Total..						
From School Fees and other sources not stated above.					Total....						
					Income from all sources....						

III.—PAYMENTS.

Date.	£ s. d.	Date.	£ s. d.
Balance, if any, in favour of the Charity and in hand at the commencement of the account.....		1. <i>Payments for management of business and other payments, not being direct payments for the educational purposes of the Charity, nor coming under any other specific head in this Form, such payments to be classified in a suitable manner, and so as to show under separate heads all payments for purposes not educational.</i>	
From Real Estate		2. Pensions— Pensions, if any, to former Teachers or Officers, naming each	
From Personal Estate		3. School Expenses— Payments to Head Master or Head Mistress	
From Fees of Scholars		Fixed stipend at £ a year	
Entrance Fees, if any,— For scholars, at £ s. d. each		Capitation payment— For scholars, at £ a year each	
For scholars, at £ s. d. each		For scholars, at £ a year each	
Tuition Fees, general— For scholars, at £ s. d. each a year		Payments to Assistant Masters, or Teachers, showing the yearly rate of payment to each	
For scholars, at £ s. d. each a year		Examination expenses	
Special Fees, if any, for scholars and for what purposes		Cost of prizes	
Other receipts, if any, to be classified under suitable heads		Payments for care of school buildings	
<i>NOTE.—A statement of number, rate, and total amount of any fees not charged to be added here, with references to clauses of Scheme or other authority under which such fees respectively are not charged.</i>		4. Scholarships, described in each case by reference to clause of Scheme or other authority under which they are respectively maintained	
		For Scholars, at £ a year each, under authority of	
		For Scholars, at £ a year each, under authority of	
		5. Exhibitions, described in each case by reference to clause of Scheme or other authority under which they are respectively maintained	
		For Exhibitions at £ a year each, under authority of	
		For Exhibitions at £ a year each, under authority of	
		Balance at close of Account.....	£
		Total Income for year.....	£

II.—RECEIPTS.

**App. II.
Form I.**

IV. AN ACCOUNT of all Monies owing to or from the Charity, so far as conveniently may be stated, at the close of the Year ending on the day of 188 .

A Statement of all Monies owing to the Charity, and from what persons, and on what accounts.	£ s. d.	A Statement of all Monies owing from the Charity, and to what persons, and on what accounts.	£ s. d.

I (or We) hereby certify that the foregoing statements are correct.

To be signed by one or more of the Trustees } } Trustees or
or Persons acting in the administration } } persons so acting.
of the Charity.

Audited and found to be correct.

Signature of Auditor, if any appointed Auditor.

Dated the day of 188 .

Dated the day of 188 .

Form No. 2 (a).

(No. 105.) (b)

Form for rendering Accounts.

Statement of the Accounts of the Charity called in the Parish of in the County of of which the following persons are the Trustees, viz.:—*

For the year ending on the day of 18 .

* The names, professions or qualities, and residences of such persons, should be stated.

(a) Forms Nos. 2 and 3 are alternative forms, the former for larger and the latter for smaller charities.

(b) See note (a) on p. 789, ante.

1.—Gross Income arising or due from the Endowments of the Charity for the year ending on the ——— day of ——— 18 .

Description of Real Property.	Acreage.	Names of Tenants.	For what Term leased or held.	Gross yearly Income.	Descriptions of Outgoings or Deductions.	Amount.	Net annual Income.	Arrears due at commencement of Account.	Sums received.	Arrears due at close of Account.

Form Real Estate.

Description of Stock in the Public Funds.	Amount.	Gross yearly Income.	Names and Descriptions of Persons in whose Names invested.	Deductions (if any) from Income.	Amount.	Net annual Income.	Arrears due at commencement of Account.	Sums received.	Arrears due at close of Account.
	£ s. d.								

Other Personalty, including Securities for Money and Deposits in Savings or other Banks.	Amount.	Gross yearly Income.	Persons to whom Securities made or Deposits due.

Form Personal Estate.

N.B.—Any Returns to which this Form is not adapted, to be made on separate sheets.

**APP. II.
Form 2.**

2. Balances in hand and Receipts on account of the Charity during the Year.

DATE.		£ s. d.
	Balance (if any) in favour of the Charity and in hand at the commencement of the Account ..	
	£	

3. Payments on account of the Charity during the Year.

DATE.		£ s. d.
	£	

4. AN ACCOUNT of all Moneys owing to or from the Charity, so far as conveniently may be stated, at the close of the Year ending on the ——— day of ——— 18 .

Moneys owing to the Charity, and from what persons, and on what accounts.	£ s. d.	Outstanding Debts or Liabilities of the Charity, and to what persons, and on what accounts.	£ s. d.

I (or We) hereby certify that the foregoing statements are correct.

To be signed by one or more of the } Trustees of the Charity. } Trustees.

Audited and found to be correct.

Signature of Auditor, }
if any appointed. }

Auditor.

Dated the ——— day of ——— 18 .

Form No. 3 (a).

(No. 106.) (b)

Form for rendering Accounts.

Statement of the Accounts of the Charity called ——— in the Parish of ——— in the County of ——— of which the following persons are the Trustees, viz. :—*

For the year ending on the ——— day of ——— 18 .

* The names, professions or qualities, and residences of such Trustees or other persons should be stated.

If the Charity is under the actual management of persons who are not Trustees, it should be stated in what capacity they act.

N.B.—The Educational Form on page 796, if not applicable to the case, or any parts of this Form which are not applicable, need not be further noticed.

(a) This form and Form No. 2 are alternative forms. The present is for smaller, and No. 2 for larger charities.

(b) See note (a) on p. 789, ante.

I.—GROSS INCOME arising or due from the Endowments for the year ending on the ——— day of ———, 18 .

Description of Real Property.	Acceage.	Name of Tenant.	For what term leased or held.	Gross yearly Income.	Outgoings and Deductions from Gross Income.	Amount.	Net yearly income.	Arrears due at commencement of Account.	Sums received.	Arrears due at close of Account.
Description of Stock in the Public Funds.	Amount. £ s. d.	Names and Descriptions of Persons in whose names invested.		Gross yearly Income.						
Other Personalty, including Securities for Money and Deposits in Savings or other Banks.	Amount. £ s. d.	Names and Descriptions of Persons to whom Securities made or Deposits due.		Gross yearly Income.						

II.—RECEIPTS.			III.—PAYMENTS.		
Dates.	£ s. d.		Dates.	£ s. d.	
		BALANCE (IF ANY) IN FAVOUR OF THE CHARITY AT THE COMMENCEMENT OF THE ACCOUNT:—			FOR CHARITABLE PURPOSES OTHER THAN EDUCATIONAL, VIZ.:— Total of Educational Payments from page 796 Balance at close of Account

Details of Educational Payments (if any) to be stated on next page.

App. II.
Form 3.

Dates.	PAYMENTS.	£ s. d.																		
	<p align="center">EDUCATIONAL PAYMENTS (IF ANY).</p> <p><i>For Scholarships, Exhibitions, or otherwise, to or for the benefit of Scholars at Elementary Schools, viz. :—</i></p> <table border="0"> <tr> <td></td><td align="center">£ s. d.</td><td></td></tr> <tr> <td><i>For</i></td><td><i>Scholars, at</i></td><td><i>each....</i></td></tr> <tr> <td><i>For</i></td><td><i>Scholars, at</i></td><td><i>each....</i></td></tr> </table> <p><i>The like for Scholars at place of Education higher than Elementary, viz. :—</i></p> <table border="0"> <tr> <td></td><td align="center">£ s. d.</td><td></td></tr> <tr> <td><i>For</i></td><td><i>Scholars, at</i></td><td><i>each....</i></td></tr> <tr> <td><i>For</i></td><td><i>Scholars, at</i></td><td><i>each....</i></td></tr> </table> <p><i>Other payments for Educational purposes, viz. :—</i></p> <p align="right"><i>Total of Educational Payments carried to page 795..... £</i></p>		£ s. d.		<i>For</i>	<i>Scholars, at</i>	<i>each....</i>	<i>For</i>	<i>Scholars, at</i>	<i>each....</i>		£ s. d.		<i>For</i>	<i>Scholars, at</i>	<i>each....</i>	<i>For</i>	<i>Scholars, at</i>	<i>each....</i>	
	£ s. d.																			
<i>For</i>	<i>Scholars, at</i>	<i>each....</i>																		
<i>For</i>	<i>Scholars, at</i>	<i>each....</i>																		
	£ s. d.																			
<i>For</i>	<i>Scholars, at</i>	<i>each....</i>																		
<i>For</i>	<i>Scholars, at</i>	<i>each....</i>																		

IV. A STATEMENT of all Moneys owing to the Charity, and from what Persons, and on what Account.

--	--

V. A STATEMENT of all Moneys owing from the Charity, and to what Persons, and on what Account.

--	--

I (or We) hereby certify that the foregoing statements are correct.

*To be signed by one or more of the
trustees or persons acting in the
administration of the charity.*

} *Trustees or
persons so
acting.*

Dated this _____ *day of* _____ 18 .

Audited and found correct.

Signature of Auditor }
(if any).

Auditor.

Dated this _____ *day of* _____ 18 .

Form No. 4.

(No. 3) (a).

General Form of Application to the Board (b).

To the Charity Commissioners for England and Wales.

In the matter of the charit * ——— in the parish of ——— in the county of ———; and

In the matter of the Charitable Trusts Acts, 1853 to 1887.

The undersigned, being † ——— submits the following statement ‡ :—

- 1.
- 2.
- 3.
- 4.
- 5., &c.

In these circumstances, the ——— apply to the board for the following purposes :—§

- 1st.
- 2nd.
- 3rd.
- 4th., &c.

and for such order or direction in the matter as the Commissioners may think fit.

I declare that the above statement is in all respects true according to my information and belief.

Dated this ——— day of ——— 188

||

* Insert the usual name or designation of the charity, and the name of the parish, or place, if any, to which the charity is attached.

† The application may be made by the trustees or persons concerned in the management or administration of the charity, or by any person acting on their behalf and by their direction.

‡ State here concisely and, as far as conveniently may be, in numbered paragraphs, the material facts and circumstances of the case.

§ State here, as far as conveniently may be, in numbered paragraphs, the specific objects of the application.

|| The applicant should here sign his name, adding his profession or occupation and residence.

(a) See note (a) on p. 789, *ante*.(b) See Charit. Trusts Act, 1869, s. 5, *ante*.

App. II.
Form 5.

Form No. 5.

(No. 4) (a).

(Charit. Trusts Act, 1853, s. 17.)

Form of Application for an Order or Certificate of the Board authorizing any Suit or other Proceeding before any Court or Judge.

To the Charity Commissioners for England and Wales.

In the matter of the charity called* ——— in the ——— of ———
in the county of ———.

The undersigned, being † ——— submits the following notice and statement‡:—

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

Under the foregoing circumstances, the undersigned is desirous of instituting proceedings for effecting the following objects:—

That is to say §

1st.

The undersigned accordingly requests the board to issue an order and certificate authorizing him to make an application to || ——— for effecting the above objects.

I declare that the above statement is in all respects true according to my information and belief.

Dated this ——— day of ——— 18 . ¶

* Insert the usual name or designation of the charity, and the name of the parish, township, or place for the benefit whereof the charity was founded or in which it is administered.

† The applicant should here state whether or not he is trustee, or person administering or claiming to administer, or interested in the charity, or an inhabitant of the parish or place within which the charity is administered or applicable.

‡ State here concisely, and, as far as conveniently may be, in numbered paragraphs, all the material facts and circumstances of the case.

§ State here, as far as conveniently may be, in numbered paragraphs, the specific objects for which proceedings are proposed to be taken.

|| Describe the court or judge.

¶ The applicant should here sign his name, adding his profession or occupation and residence.

(a) See note (a) on p. 789, ante.

Form No. 6.

App. II.
Form 6.

(No. 5) (a).

(Charit. Trusts Act, 1853, s. 21.)

Form of Application to the Board for Authority to grant a Lease.

To the Charity Commissioners for England and Wales.

In the matter of the charity called* ———, in the parish of ———,
in the county of ———.

The † ——— of the above-mentioned charity, being of opinion that the property hereinafter mentioned, belonging to the charity, may be beneficially let on lease, submit to the Board the following statement and proposal, and request the Board to make, under their seal, such order as they may think fit for and in relation to the granting of the proposed lease.

The ——— submit to the Board the following particulars as to:—

1. The mode and date of the appointments of the existing trustees (if any) of the charity, and the number originally appointed.
2. The general objects of the charity.
3. The nature, extent, and general description of the property proposed to be leased and the interest of the charity therein, and whether it forms the whole or part only of the charity property.
4. The township, parish, and county in which the said property is situate.
5. In whom the legal estate in the said property is now vested, and by what conveyance, assurance, or other means?
6. The manner in which the said property has been let or occupied during the last three years.
7. The amount of the gross annual rent or income arising therefrom during each of the last three years.
8. The amount and particulars of the outgoings or deductions from such rent or income in each of such years.
9. The present annual letting or rackrent value thereof.
10. The object of the proposed lease, and whether for building, repairing, improving, mining, or other purposes.
11. The reasons for believing that the grant of the proposed lease will be for the benefit of the charity.
12. The name, quality, profession, or occupation and residence of the proposed lessee, if any.
13. The amount and particulars of the proposed rent, and other reservations, if any.
14. The length or nature of the proposed term.
15. The nature of the *special* covenants or provisions (if any) intended to be inserted in the lease.
16. The name and address of any surveyor by whom the property has been or is proposed to be surveyed and valued on behalf of the charity, or to whom the terms and conditions of the proposed lease have been or are supposed to be submitted for approval. *NOTE.—If any report or valuation, or any map or plan of the property has been made, the same, or copies thereof, should be sent herewith. The commissioners will,*

(a) See note (a) on p. 789, *ante*.

App. II.
Form 6.

if they think fit, require the property to be surveyed and valued, and the proposed lease to be reported on or approved by a surveyor nominated by themselves.

_____ declare that the foregoing statement is in all respects true according to _____ information and belief.

Dated this _____ day of _____ 18 .

†

* Insert the usual name or designation of the charity, and the name of the pariah, township, or place for the benefit whereof the charity was founded, or in which it is administered.

† The application may be made by the trustees or persons acting in the administration of the charity, or by some person acting on their behalf and by their direction.

‡ The date and the signature, address, and description of each individual applicant should be added here. Each signature should begin a separate line. If the applicants be a corporate body their seal should be attached.

Form No. 7.

(No. 5A) (a).

(Charit. Trusts Act, 1853, s. 21.)

Form of Application for the Authority of the Board to grant a lease or leases in pursuance of an agreement previously sanctioned by the Board.

To the Charity Commissioners for England and Wales.

In the matter of the charity called * _____, in the parish of _____, in the county of _____. The undersigned being † _____ of the above-mentioned charity submits the following statement:—

1. By an agreement dated the _____ day of _____, 18 , and made between _____ and _____, it was (amongst other things) agreed that ‡ _____.

2. The said agreement was sanctioned by the Charity Commissioners on the _____ day of _____, 18—.

3. A certificate from Mr. _____, of _____, the surveyor to the _____, accompanies this application, from which it appears that the said _____ has so far carried out the terms of the said agreement as to entitle him to the grant of a lease of the following property, viz. :—

4. §

5. A draft lease of the property in question has accordingly been prepared in conformity with the terms of the said agreement, and agreed to by all parties concerned, and is forwarded herewith for the information of the said Commissioners.

In the above circumstances the _____ have directed the undersigned to apply to the said Commissioners for an order under their seal authorising the granting of the said lease.

I declare that the foregoing statement is in all respects true according to my information and belief.

Dated this _____ day of _____, 18—.

||

(a) See note (a) on p. 789, ante.

The Certificate referred to above.

App. II.
Form 7.

I, ——— of ——— Surveyor ——— hereby certify that ¶
Dated this ——— day of ———, 18 .

* *

* Insert usual name or designation of charity and name of parish, township, or place for benefit whereof charity was founded, or in which it is administered.

† The application may be made under the direction of the trustees or administrators, by their clerk or other agent.

‡ State very concisely the terms of the agreement so far as they relate to the property about to be leased.

§ State here any further material facts necessary to explain the draft lease.

|| The applicant should here add his signature.

NORM.—The Surveyor's Certificate may be a distinct document.

¶ The Surveyor's Certificate should specify the nature, quality, cost, &c., of the work done in pursuance of the agreement.

* * The Surveyor should here add his signature.

Form No. 8.

(No. 91.) (a)

(Charit. Trusts Act, 1853, s. 21.)

CHARITY COMMISSION.

PROPOSALS FOR LEASES OF CHARITY ESTATES.

Instructions to Surveyors (b).

Surveyors should be instructed by the trustees of the charity to inspect the property proposed to be leased, and to forward to this office, for the information of the commissioners, a valuation and Report based upon their inspection, together with a plan of the property showing its abutments and approaches, and identifying it, as far as possible, with its description in the tithe apportionment of the parish, or in any authoritative map or plan of the locality.

The report should furnish information upon the following, as well as upon any other material points:—

1. The situation and general description of the property, stating the parish (and township, or other subordinate area, if any) in which it is situated, its extent, and, if it includes agricultural land, the mode of cultivation.

2. The tenancy and present rental of the property and its present condition.

3. The present improved annual letting value and the amount and incidence of the land tax, tithe rent charge and other fixed outgoings.

4. The length of the term to be granted.

5. The proper amount of ground rent, royalty, or other reservation.

6. The nature of any special covenants to be imposed upon the lessee.

7. The minimum amount to be expended in building by the lessee.

8. The class and character of the buildings to be erected, and the time to be limited for their completion.

9. The mode in which the property may be most advantageously divided and offered for letting, and the number, extent, and separate values of the plots (if any) into which it should be divided, and which should be indicated on the plan.

Charity Commission, Whitehall, S.W.

August, 1877.

(a) See note (a) on p. 789, ante.

(b) See ante, p. 436.

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3 F

App. II.
Form 9.

Form No. 9.

(No. 6.) (a)

(Charit. Trusts Act, 1853, s. 24.)

Form of Application to the Board to authorize a Sale.

To the Charity Commissioners for England and Wales.

In the matter of the charity called* ———, in the parish of ———, in the county of ———; and

In the matter of "The Charitable Trusts Acts, 1853 to 1887."

That ——— of the above-named charity, being of opinion that, under the special circumstances hereinafter stated, a sale of the property hereinafter mentioned will be advantageous to the charity, hereby apply to the Board to authorize the proposed sale, and to give such directions in relation thereto, and for securing the due investment of the money arising from such sale, as the Board may think fit.

The trustees submit to the Board, in relation to the proposed sale, the following particulars as to:—

1. The mode and date of the appointments of the existing trustees (if any) of the charity, and the number originally appointed.

2. The general objects of the charity.

3. The nature, extent and description of the property proposed to be sold, and whether it forms the whole or part only of the charity estate.

4. The township, parish and county in which the said property is situate.

5. In whom the legal estate in the said property is now vested, and by what conveyance, assurance, or other means.

6. The manner in which the said property has been let or occupied during the last three years.

7. The amount of the gross annual rent or income arising therefrom during each of the last three years.

8. The amount and particulars of the outgoings or deductions from such rent or income in each of such years.

9. The present annual letting or rack-rent value thereof.

10. The special circumstances under which the sale is proposed, and the advantages likely to result to the charity therefrom.

11. Whether the sale is proposed to be made by public auction or private contract, and whether any offer for the purchase thereof has been received, and the terms of such offer, if any.

12. The name, description, and address of the person by whom any such offer has been made.

13. Whether the purchaser will accept the title and pay the expenses of the trustees in the matter.

14. The manner in which it is proposed that the purchase-money shall be invested. *NOTE.—It is the practice of the Commissioners to require that, in the absence of special circumstances justifying a departure from the rule, the purchase-money shall be invested, in trust for the charity, in the Government Funds in the name of the Official Trustees of Charitable Funds.*

15. The name and address of any surveyor by whom the

(a) See note (a) on p. 789, *ante*.

said property has been or is proposed to be surveyed and valued on behalf of the charity. NOTE.—*If there is any report or valuation, or any map or plan of the property, the same should be sent herewith. The Commissioners will, if they think fit, require the property to be surveyed and valued, and the proposed sale to be reported on or approved by a surveyor nominated by themselves.*

—— declare that the foregoing statement is in all respects true according to —— information and belief.

Dated this —— day of —— 18 .

†

* Insert the usual name or designation of the charity, and the name of the parish, township, or place for the benefit whereof the charity was founded, or in which it is administered.

† The application may be made by the trustees or persons acting in the administration of the charity, or by some person acting on their behalf and by their direction.

‡ The date and the signature, address, and description of each individual applicant should be added here. Each signature should begin a separate line.

If the applicants be a corporate body, their seal should be attached.

Form No. 10.

(No. 90.) (a)

(Charit. Trusts Act, 1853, s. 24.)

CHARITY COMMISSION.

PROPOSALS FOR SALES OF CHARITY ESTATES.

Instructions to Surveyors (b).

Surveyors should be instructed *by the trustees of the charity* to inspect the property proposed to be sold, and to forward to this office, for the information of the commissioners, a valuation and report based upon their inspection, together with a plan of the property, showing its abutments and approaches, and identifying it, as far as possible, with its description in the tithe apportionment of the parish, or in any authoritative map or survey of the locality.

The report should furnish information upon the following, as well as upon any other material points:—

1. The situation and general description of the property, stating the parish (and township, or other subordinate area, if any) in which it is comprised, its extent, and the mode of cultivation.

2. The tenancy and present rental of the property, and state of cultivation of the land, the condition of the buildings, and the amount of outlay upon them necessary for the maintenance of the full rent of the property.

3. The present improved annual letting value, and the amount and incidence of the land tax, tithe rent-charge, and other fixed outgoings.

4. The ordinary market value in fee simple in possession.

5. The additional value (stated separately) either by way of accommodation to an adjoining owner, or to a tenant, or for building purposes.

(a) See note (a) on p. 789, *ante*.

(b) See *ante*, p. 490.

**App. II.
Form 10.**

6. The prospect of a future increase in value as building land, or otherwise.

7. The separate values (if any) of the timber upon, and of the minerals, brick, earth, &c., underlying the property.

8. The mode in which a sale may most advantageously be effected, whether by private contract or by public auction, and the number, extent, and separate values of the lots (if any) into which the property should be divided, and which should be indicated on the plan.

And, where part only of a property is proposed to be sold,

9. The effect of a sale upon the remainder of the property, and its bearing upon the value of the part offered for sale.

Charity Commission, Whitehall, S.W.,

August, 1877.

Form No. 11.

(No. 87.) (a)

Conditions of Sale (b).

[Where property vested by order of the Charity Commissioners.]

The property offered for sale forms part of the endowment of the charity called or known as ———, and the sale is made with the consent and under the authority of an order of the Charity Commissioners of England and Wales.

The legal estate in the property is now vested in the Official Trustee of Charity Lands, under ———.

The vendors are selling as the trustees of the charity, appointed by [under the provisions of a scheme] ———, and the purchaser shall admit the sufficiency of the title of the said trustees, and the vendors shall not be bound to deliver any abstract of title, or to produce any deeds or any other evidence of their title to the property sold than official copies of the orders of the commissioners appointing the said trustees, vesting the legal estate in the property in the Official Trustee of Charity Lands, and sanctioning the present sale, and a statutory declaration made by some competent person that the property sold was included in the two orders last mentioned, and has been in the possession of the trustees of the charity for upwards of thirty years, which copies and declaration respectively shall be prepared and furnished at the expense of the purchaser.

The purchaser shall admit the validity of the appointment of those of the vendors who have been appointed trustees under the provisions of the said scheme, and shall accept as correct a list of the trustees signed by their clerk or secretary.

Form No. 12.

(No. 88.) (a)

Conditions of Sale (b).

[Where title derived under deed or will.]

The property offered for sale forms part of the ancient possessions of the charity, called ———, created by ———, dated the ——— day of ———, 18—, of which charity the vendors are the present trustees under or by virtue of ———, dated the ——— day of ———, 18—. The property is offered for sale by the vendors as the trustees of the said charity, with the consent and under the authority of the Charity Commissioners for England and Wales. The purchaser shall admit the sufficiency of the title of the said trustees under the said ———,

(a) See note (a) on p. 789, *ante*.

(b) See *ante*, p. 491.

and the vendors shall not be bound to deliver any abstract of title, or to produce any other evidence of their title to the property sold, than the said —, an attested copy of which will be furnished to the purchaser, if desired by him, at his expense, but the original of which will be retained by the vendors; and an official copy of the order of the said commissioners authorizing the sale, and a statutory declaration made by some competent person, that the property sold has been in the possession of the trustees of the said charity for upwards of thirty years, which copies and declaration respectively shall be prepared and furnished at the expense of the purchaser.

Form No. 13.

(No. 92.) (a)

Conveyance (b).

NOTE.—This form is intended for guidance in preparing the deed of conveyance so far only as it relates to the Official Trustee of Charity Lands. The legal advisers of the trustees or governors must remain responsible for the technical sufficiency of the deed in other respects.

THIS INDENTURE made the — day of —, 18—, between Daniel Robert Fearon, Esquire, the secretary for the time being of the Board of Charity Commissioners for England and Wales, and as such “the Official Trustee of Charity Lands,” hereinafter called the official trustee, of the first part, A. B., C. D., and E. F., of —, in the county of —, being the trustees [*governors*] of the [*charit*] of the second part, and — [*purchaser*] of the third part.

Whereas the parties hereto of the second part, hereinafter referred to as the trustees [*governors*], are the duly constituted trustees [*governors*] of the said charit .

And whereas [by an order made by the said Board on the — day of —, 18—], [by a Scheme made under the Endowed Schools Acts, and approved by Her Majesty in Council on the — day of —, 18—], the legal estate in the land intended to be hereby conveyed was vested in the official trustee in trust for the charit . And whereas, by an order made by the said Board on the — day of —, 18—, the trustees [*governors*] were authorized within — months from the date thereof, to sell the land described in the schedule thereto (being the land hereinafter mentioned and intended to be hereby conveyed) for not less than £—, and to do and execute all proper acts and assurances for carrying the said sale into effect, and to give a conclusive discharge to the purchaser for the purchase-money to arise from such sale; and by the last recited order the official trustee was ordered and directed to concur in the conveyance of the said land if his concurrence should be required. Now this indenture witnesseth, that in consideration of the sum of £— paid to the trustees [*governors*] by the said [*purchaser*] for the purchase of the fee-simple of the said land, the receipt of which the trustees [*governors*] hereby acknowledge, the said Daniel Robert Fearon, pursuant to the order and direction given to the official trustee by the last-recited Order, and at the request of the trustees [*governors*], testified by their execution hereof, hereby conveys, and the trustees [*governors*] as trustees hereby convey and confirm to the said [*purchaser*] all [*parcels*] to hold to and to the use of the said [*purchaser*] in fee-simple.

NOTE.—The official trustee does not enter into any covenants.

(a) See note (a) on p. 789, *ante*.(b) See *ante*, p. 491.

**App. II.
Form 14.**

Form No. 14.

(No. 7.) (a)

(Charit. Trusts Act, 1853, s. 24.)

Form of Application for the Authority of the Board for an Exchange.

To the Charity Commissioners for England and Wales.

In the matter of the Charity called* —, in the — of —, in the county of —.

The undersigned being the — of the above-named charity, and being of opinion that, under the special circumstances mentioned in the subjoined statement, an exchange of the particular property therein also mentioned, and belonging to the charity, can be effected on such terms as to increase the income thereof or to be otherwise advantageous to the charity, hereby request the Board to inquire into such circumstances; and if after inquiry the Board are satisfied that the proposed exchange will be advantageous to the charity, to authorize such exchange, and to give such directions in relation thereto, and for securing the due investment of the money to be paid by way of equality of exchange (if any) for the benefit of the charity, as the Board may think fit.

State,

1. The mode and date of the appointments of the existing trustees (if any) of the charity, and the number originally appointed.

2. Whether the charity property is legally vested in such trustees, and, if so, by what conveyance or assurance.

The particular Property hereinbefore referred to, and belonging to the said Charity, and proposed to be exchanged, is situate in the township of — in the Parish of — in the County of — and is described as follows:—

Description.	Extent.	How let or occupied.	Present Gross Annual Value.	Deductions.

The Property proposed to be exchanged for the Lands and Hereditaments hereinbefore described is situate in the township of — in the Parish of — in the County of — and is described as follows:—

Description.	Extent.	How let or occupied.	Present Gross Annual Value.	Deductions.

(a) See note (a) on p. 789, *ante*.

State,

3. The estate and interest of the charity in the property proposed to be exchanged.

4. Whether the charity is possessed of property in addition to that proposed to be exchanged.

5. The special circumstances under which the exchange is proposed, and the advantages likely to result to the charity therefrom.

6. The name, quality, profession or occupation and address of the person with whom the exchange is proposed to be made.

7. The estate or interest of such person in the property to be given by him in exchange.

8. The manner in which the property to be given in exchange and the property to be received in exchange by the charity have respectively been let or occupied during the last three years; and the amount of the gross and net annual rents or income arising therefrom during the same period.

9. The amount of the money (if any) to be received or paid by way of equality or exchange.

10. The manner in which the money (if any) to be so received by the charity is proposed to be invested and secured, or in which any money to be so paid by the charity is proposed to be raised or provided.

11. The name and address of any surveyor by whom the properties to be given and taken in exchange respectively have been or are proposed to be surveyed and valued on behalf of the charity.

Note.—If there is any report or valuation, or map or plan of the properties referred to, the same, or a copy of each, should be sent herewith. The commissioners will, if they think fit, require such properties to be surveyed and valued, and the proposed exchange to be reported on or approved by a surveyor appointed by themselves.

We declare that the foregoing statement is in all respects true, according to our information and belief.

Dated this ——— day of ———, 18—.

* Insert the usual name or designation of the charity, and the name of the parish, township, or place for the benefit whereof the charity was founded, or in which it is administered.

† Trustees or persons acting in the administration.

Form No. 15.

(No. 1.) (a)

(Charit. Trusts Amend. Act, 1855, s. 22.)

Form of Application for an Order of the Board for the Payment of Money to "The Official Trustees of Charitable Funds."

To the Charity Commissioners for England and Wales.

In the matter of the Charity called *———, in the ——— of ———, in the county of ———.

The undersigned being †———, the particulars and trusts of which are stated in the accompanying paper, ‡ and being desirous that the

(a) See note (a) on p. 789, *ante*.

**App. II.
Form 15.**

said sum of ——— should be paid to the banking account of "The Official Trustees of Charitable Funds," request the Board to issue an order for that purpose.

§ ——— declare that the above statements are in all respects true.

Dated this ——— day of ———, 18—.

|| ———.

* Insert usual name or designation of the charity to which the money proposed to be paid belongs, and, if the charity is local, the name of the parish, township, or place for the benefit whereof it has been founded.

† The applicants should here state in what manner or capacity they are possessed or interested in the money proposed to be paid, and must state the amount.

‡ An extract or copy of the will or deed creating the trust should be sent, if possible, with the application.

§ I or we.

|| The applicants should here sign their names, adding their professions or occupations and residences.

Form No. 16.

(No. 2.) (a)

(Charit. Trusts Amend. Act, 1855, s. 22.)

Form of Application for an Order of the Board of Charity Commissioners for England and Wales, authorising the Transfer of Stock to "The Official Trustees of Charitable Funds."

To the Charity Commissioners for England and Wales.

Whitehall, London, S.W.

In the matter of the Charity called* ———.

The undersigned being† ——— submit the following statements:—

1. The above charity is possessed of £ ‡ ——— per cent. Annuities, standing in the names of § ——— in the books of the Governor and Company of the Bank of England upon the trusts stated in the accompanying paper. ||

2. For the purpose of security or convenient administration the said annuities ought to be transferred to the account of "The Official Trustees of Charitable Funds," and the arrears of dividends (if any) due thereon should be received and recovered for the benefit of the said charit —.

3. ¶

4. **

5. ††

Under the foregoing circumstances the undersigned are desirous of obtaining an order of the Board authorising the transfer of the above-mentioned sum of £ ——— per cent. Annuities,

Or, if necessary, a like order vesting in "The Official Trustees of Charitable Funds," the right to call for the transfer of and to transfer the same stock,

Into the name of "The Official Trustees of Charitable Funds," in trust for the said charit —. And also to receive and recover in trust for the said charit —, all dividends accrued from the said annuities which shall be in arrear at the time of such transfer.

——— declare that the above statements are in all respects true, according to ——— information and belief.

Dated this ——— day of ——— 188—.

††

* Insert usual name or designation of the charity to which the stock proposed to

(a) See note (a) on p. 789, ante.

be transferred belongs; and if the charity is local, the name of the parish, township, or place for the benefit whereof it has been founded.

† Applications may be made—

1. By the person or persons in whose name or names the stock to be transferred stands, or, if they are all deceased,
2. By any of the trustees or persons administering or claiming to administer the charity, or,
3. By any person interested therein, or,
4. By two or more inhabitants of any parish or place within which it is administered or applicable.

The specific capacity of the applicants to be stated.

‡ Insert exact amount and correct description of stock.

§ Also the names, residences, and descriptions exactly as stated in the bank books of the persons in whose names the stock now stands.

(The stock receipt should also be sent if possible.)

|| An extract or copy of the deed or will creating the trust should be forwarded with this application, unless the foundation of the charity be already recorded in the Parliamentary Reports, to which reference should then be made.

¶ If any of the stockholders should be dead, their names should be stated here; and it should also be stated whether their deaths have been proved at the Bank of England, either in respect of the above or any other sum of stock. If so, either the bank register numbers marked on the probates of their wills or letters of administration; or, the amount and description of stock in respect of which their deaths have been proved, should likewise be stated. Failing this, certificates of their burial should, if possible, be forwarded with this application.

** State whether it is proposed to transfer the stock by personal attendance at the bank or under power of attorney. In the latter case, if desired, a blank power will be procured and forwarded to the applicants for execution; the cost of the power (11s. 6d.) being paid out of the dividends.

†† State whether there are any dividends at present due, in respect of the said sum of stock, and the amount.

‡‡ The applicants should here sign their names in full, also their addresses and descriptions.

Form No. 17.

(No. 93.) (a)

CHARITY COMMISSION.

Memorandum as to the Transfer of Funds affected by Charitable Trusts to "The Official Trustees of Charitable Funds."

The Official Trustees of Charitable Funds are empowered to hold in perpetual succession, stocks, shares, securities, and moneys, which devolve upon their successors without transfer or assignment.

By the Charitable Trusts Acts, provision is made for the transfer or payment to the Official Trustees of Charitable Funds, of stock or money in trust for a charity, by any person, and especially by trustees or other holders of charitable funds,—by the representatives of those persons,—and by persons desirous of discharging any legacy or charge given or made to or for the benefit of any charity.

A payment or transfer may be made to the Official Trustees of Charitable Funds under these provisions, in pursuance of an order of the Board of Charity Commissioners for England and Wales for that purpose, which furnishes, by express statutory provision, a complete indemnity to all companies and persons making a payment or transfer or otherwise acting in obedience to it.

The official trustees have no power to interfere in the administration of the income, or in the management of any charity, and their duty is confined to remitting periodically the dividends and income of the funds standing in their name, free from income tax, by drafts on the Bank of England, through a banker or otherwise, to or according to

Charitable Trusts Act, 1855 (18 & 19 Vict. c. 124), s. 18.

Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 51.

Charitable Trusts Act, 1855, s. 22.

Charitable Trusts Act, 1855, s. 25.

Charitable Trusts Act, 1855, s. 27.

Charitable Trusts Act, 1853, s. 52.

Charitable Trusts Act, 1855, s. 28.

(a) See note (a) on p. 789, ante.

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Form 17.**

the order of the administering trustees of the charity in trust for which the funds are held, for the purpose of being applied by them to the objects of the trust.

The general advantages of vesting charitable funds in the official trustees, in addition to the absolute indemnity thus afforded to the trustees or administrators of a charity, are as follows:—

- (a) The necessity for periodical transfers of stock upon appointments of new trustees, at a constantly recurring cost to the charity, is obviated.
- (b) Charitable funds held by individual trustees, in course of time frequently become vested, either in a single surviving trustee, or in a personal representative of a surviving trustee, or in some other stranger to the trust, or, again, they remain either uninvested or invested in unauthorized securities. All risk to the security or productiveness of trust funds which may thus arise, is avoided where funds are vested in the official trustees.
- (c) Where, especially on the foundation of a charity, funds are in the hands of persons, whether executors or others, who are not constituted, or do not desire to become the administering trustees of the charity, they can, by vesting the trust fund in the official trustees, not merely relieve themselves of all responsibility, but will ensure its due application in conformity with the trusts attaching to it, by trustees duly appointed by the Board.

It is obvious that, apart from personal considerations, considerable risk of loss, or of the occurrence of difficulty in tracing the existence of trust funds, arises, both where stock or other securities are held by a single individual or by strangers to the trust, and also, where sums of cash are allowed to remain in private hands uninvested. In these cases the devolution of the fund, on the death of the holder, must, almost certainly, take a course foreign to the trust, and the property of the charity may probably become mixed with, and undistinguishable from, private funds. In any of these cases it will be the duty of the Commissioners, in accordance with the invariable practice of Courts of Equity, to take steps to ensure the safe custody of the fund by means of its transfer or payment to the official trustees.

Form No. 18.

(No. 9.) (a)

(Charit. Trusts Act, 1860, s. 2.)

To the Charity Commissioners for England and Wales.

In the matter of the Charit— in the Parish of —, in the County of —; and

In the matter of “The Charitable Trusts Acts, 1853 to 1887.”

* — hereby apply to the Charity Commissioners for an order—

1. Removing† — from the office of trustee of the charit—;
 2. Appointing new trustees of the charit—;
 3. Establishing a scheme for the administration of the charit—;
- and giving all necessary and proper incidental directions in relation thereto.

Dated this — day of —, 18—.

† —.

(a) See note (a) on p. 789, *ante*.

The applicants submit to the commissioners the following recommendations, § viz. :—

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1. That § ———, who have expressed in writing their willingness, if ultimately appointed, to accept and act in the trusts, should be appointed trustees of the charit—.

2. That a scheme to the following effect should be established for the administration of the charit—, viz. :—

NOTE.—The application should be made in conformity with the instructions and directions set forth in the annexed sheet.

* I or We.

† Insert full name, address, and description of each retiring trustee.

‡ The applicants should sign their names here, adding the capacity in which they apply; i. e., whether as trustees, inhabitants, or otherwise. See Instructions, sect. 3.

§ See Instructions, sect. 8.

|| Insert full name, address, and description of each proposed trustee.

CHARITY COMMISSION.

Instructions and Directions to be observed in applying to the Board for an Order under "The Charitable Trusts Act, 1860."

NOTE.—This sheet need not be returned, but may be detached and retained by the applicants.

1. The application must be made—

(A) In the case of a charity having a gross annual income of 50*l.* or upwards,* by, either—

(a) All the trustees or persons acting in the administration of the charity; or—

(b) A majority of those trustees or persons:

(B) In the case of a charity having a gross annual income of less than 50*l.*,† by, either—

(a) All or any one or more of—

- | | |
|---------------------------------------|----------------------|
| 1. The trustees of | } the charity;
or |
| 2. The persons administering | |
| 3. The persons claiming to administer | |
| 4. The persons interested in | |

(b) Any two or more inhabitants of any parish or place within which the charity is administered or applicable.

2. The application must be made* in writing, or partly in print and partly in writing.

3. The application (unless the applicants are a body corporate) must be signed by, either—

(a) The applicants;*

Or—if the applicants are the trustees or the persons acting in the administration of the charity,—

(b) Any person authorized in that behalf by a resolution passed by a majority of those trustees or persons who are present at a meeting of their body duly constituted and vote on the question.‡

4. If the applicants are a body corporate the application must be made under their common seal.*

5. When the application is signed by any person in pursuance of a resolution (see § 3 (b) above), it should be accompanied by a copy of

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the resolution, and a statement of the names of the persons present at the meeting, and of the numbers voting for and against the resolution, with all further necessary information.

6. The application should be accompanied by a statement showing—

- (i) The date, title, and other particulars of the Act of Parliament, charter, decree, order, scheme, will, deed, or other instrument by which the charity is now regulated;
- (ii) The name (in full), address and description, and also the date and mode of appointment, of each of the present trustees or persons acting in the administration of the charity; and
- (iii) The endowments now belonging to the charity, § showing, in the case of realty not in hand, the manner in which the same is let or occupied, and, in the case of personalty, the existing investment or employment thereof, and in what names such investments are made. A form (numbered 104) for this purpose can be obtained at the office of the commissioners.

7. The annexed form of application includes the three most usual objects of application, viz.: (1) the appointment, (2) the removal, of trustees, and (3) the establishment of a scheme; but any one or more of these may be omitted from, or any other of the objects specified in section 2 of "The Charitable Trusts Act, 1860," ¶ may be included in, the application, as may be desired.

8. The application itself should not be limited or qualified in any way, but it may be accompanied by any recommendations or suggestions—as, for instance, the names of the proposed new trustees, or the provisions of the proposed new scheme—which the applicants may think fit to submit to the commissioners for consideration. A form in which recommendations and suggestions may be made, will be found endorsed upon the annexed form of application; but a separate paper may, if preferred, be used for this purpose.

9. Every recommendation of a person for appointment as trustee of a charity should be accompanied by a statement to the effect that he has expressed in writing his willingness, if ultimately appointed, to accept and act in the trust.

10. No application by or on behalf of the trustees or persons acting in the administration of a charity can be entertained by the commissioners unless and until all proper accounts in relation to the charity have been transmitted to the commissioners, as required by law, ¶ in respect of at least three complete financial years next preceding the date of the application.

11. An order appointing a new trustee, whether directly or by means of a scheme, is chargeable with a stamp duty of ten shillings, and an order conveying or transferring any property for the purpose of effectuating such appointment is chargeable with a further stamp duty of ten shillings.** Every application to the commissioners for an order involving either or both of these objects should therefore be accompanied by a postal order (crossed "Bank of England") for the amount of the duty or duties chargeable thereon; the commissioners will at the proper time pay the duty, and procure the requisite stamp or stamps to be impressed on the order.

* 23 & 24 Vict. c. 136, s. 4.

† 23 & 24 Vict. c. 136, s. 2, and 16 & 17 Vict. c. 137, s. 43.

‡ 32 & 33 Vict. c. 110, s. 5.

§ 18 & 19 Vict. c. 124, s. 44.

¶ 23 & 24 Vict. c. 136.

¶ 16 & 17 Vict. c. 137, s. 61, and 18 & 19 Vict. c. 124, s. 44.

** 33 & 34 Vict. c. 97, ss. 3, 78.

Form No. 19.

(No. 11.) (a)

(Charit. Trusts Act, 1860, s. 2.)

Form of Application for an Order of the Board of Charity Commissioners for England and Wales, vesting in "The Official Trustees of Charitable Funds," the right to call for the transfer of Stock.

To the Charity Commissioners for England and Wales.

In the matter of the Charity called ———, in the parish of ———,
in the county of ———.

The undersigned being* ———, submit the following statements:—

1st. The above charity is possessed of £† ——— per cent. annuities, standing in the names of‡ ———, in the books of the Governor and Company of the Bank of England upon the trusts stated in the ———.

2nd. For the purpose of security or convenient administration the said annuities ought to be transferred to the account of "The Official Trustees of Charitable Funds," and the arrears of dividends (if any) due thereon should be received and recovered for the benefit of the said Charit—.

3rd. The said ——— are all deceased and § ———.

Under the foregoing circumstances the undersigned are desirous of obtaining an order of the Board vesting in "The Official Trustees of Charitable Funds," the right to call for the transfer of and to transfer into their name in trust for the said Charit—, the above-mentioned sum of £ ——— per cent. annuities. And also to receive and recover in trust for the said Charit—, all dividends accrued from the said annuities which shall be in arrear at the time of such transfer.

We declare that the above statements are in all respects true according to our information and belief ———.

Dated this ——— day of ———, 18—.

|| ———.

* Applications may be made—

By the trustees or persons acting in the administration of the charity or by a majority of them, or (where the income of the charity does not amount to £50 or upwards)—

By any one or more of the trustees or persons administering or claiming to administer or interested in the charity or—

By any two or more inhabitants of any parish or place within which the charity is administered or applicable.

† Insert exact amount, and correct description of stock.

‡ Also the names, residences, and descriptions *exactly as stated in the bank books of the persons in whose names the stock now stands.*

§ Any other circumstances material to the application should here be stated.

|| The applicants should here sign their names in full, and should add their addresses and descriptions.

(a) See note (a) on p. 789, *ante*.

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Form 20.**

Form No. 20.

(No. 12.) (a)

(Charit. Trusts Act, 1860, s. 2.)

Form of Application to the Board to approve Provisional Appointments of Trustees or Governors under Schemes.

To the Charity Commissioners for England and Wales.

In the matter of the Charit— in the Parish of —, in the County of —, now regulated by a Scheme *—.

The undersigned, being† — of the above-mentioned Charit—, submit the following statement:—

1. A vacancy in the office of — occurred on the — day of —, 18—, by the‡ of §—.

2. At a special meeting of the — duly held on the — day of —, 18—, at which there were present:—

— (in the chair),

It was resolved that|| — be provisionally appointed to fill such vacanc—.

3. Under the foregoing circumstances the — now apply to the Charity Commissioners to approve such provisional appointment under their official seal.

— declare that the above statements are in all respects true according to — information and belief.

Dated this — day of —, 18—.

¶—

* State when and by what authority the scheme was established or made.

† The application may be made by the chairman of the meeting or by the clerk, on behalf of the trustees or governors.

‡ State cause of vacancy.

§ State full name, address, and description of trustee or governor who vacates his office.

|| State full name, address, and description of proposed new trustee or governor.

¶ The applicant or applicants should here sign their names, adding the capacity in which they make the application.

Form No. 21.

(No. 92.) (a)

Application under "The Charitable Trustees Incorporation Act, 1872."

NOTE.—All applications not made on the printed form should be written on foolscap paper, *bookwise*, with a margin to the left hand of the first and third, and to the right hand of the second and fourth, pages.

[10s. stamp to be impressed here.]

To the Charity Commissioners for England and Wales.

The application of the undersigned persons, being the whole of the present trustees of the charity called or known as —, in the parish of —, in the county of —.

I. The charity was created and constituted for *— purposes by [a deed or instrument,† dated the — day of —, 1], or [by the will of —, dated the — day of —, 1], and proved

(a) See note (a) on p. 789, *ante*.

in the — Court of —, on the — day of —, 1 —, a copy whereof is appended to this application.†

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Form 21.

II. The charity is now governed by [certain rules and regulations], or [by § —], a copy § whereof is also appended to this application.

III. A statement and short description of the property, real and personal, now possessed by, or belonging to, or held on behalf of the charity, and of the income derived therefrom, or otherwise receivable for the purposes of the charity, are given in the First Schedule hereto.

IV. The names, residences, and descriptions of the present trustees of the charity, and the mode and date of their respective appointments, are stated in the Second Schedule hereto. The vacancies which have occurred in the trust since the last appointment of trustees, and the date and mode of the occurrence of each vacancy, are also stated in the same schedule.

V. The following is the proposed title|| of incorporation :

VI. The following is the proposed device of the common seal : ¶

VII. The following are the proposed regulations for the custody and use of the common seal :

VIII. The arrangements proposed for filling up vacancies in the body of trustees are as follows, viz. :

First Schedule (*giving a statement of the property and income belonging to the charity*).

Second Schedule (*giving a list of the present trustees of the charity in the order of their appointment, setting forth their respective residences and descriptions, and the date and mode of the appointment of each, and also a list of the vacancies that have occurred in the trust since the last appointment, with the date and mode of occurrence of each vacancy*).

We declare that the above statements are in all respects true according to our information and belief, and we hereby apply for a certificate of incorporation of the above-named charity, under "The Charitable Trustees Incorporation Act, 1872."

Dated this — day of —, 18—.

**

This application is forwarded by —, to whom it is requested that all communications may be addressed.

* State whether for religious, educational, literary, scientific, or public charitable purposes.

† If there should not be any deed or other instrument of foundation, the date and mode of creation of the charity should be stated.

‡ All copies to be written on foolscap paper, *bookwise*, with margins as stated above. But if the instrument of foundation has been printed it will be sufficient if a print be furnished.

§ State the nature of the instrument by which the charity is now governed or regulated.

|| The words "trustees" or "governors" and "registered" must form part of this title.

¶ The device should bear the name of the incorporation.

** The application must be signed by all the trustees.

The original trust deeds or instruments should in all cases be sent, if possible, with the application.

SCHEMES (a).

SCHEME No. I.

(Apprenticing; Educational; Poor.)

Scheme for the Management of the Charities of William Bagnall and others in the Parishes of St. Margaret and St. John the Evangelist, in the City of Westminster (b).

Date of
scheme.

1. Except as provided in Clause 9 hereof, this scheme shall come into operation on the 24th day of June, 1889, which day is hereinafter referred to as the date hereof.

Administra-
tion of chari-
ties.

2. From and after the date hereof the above-mentioned charities and their respective endowments shall be administered and managed by the body of trustees hereinafter constituted, subject to and in conformity with the provisions of this scheme:—

(i.) The charities of Henry Forrest and Jane Grinsell and their endowments shall be consolidated and administered as a separate charity, under the title of "The Forrest and Grinsell Charity;"

(ii.) The charity of Cornelius Vandon and its endowments shall be administered as a separate charity, under the title of "The Vandon Charity;" and

(iii.) All the others of the above-mentioned charities and their endowments shall be consolidated and administered as a separate charity, under the title of "The Consolidated Charity."

Definitions.

3. In this scheme, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned to them, that is to say:—

"The Commissioners" means the Charity Commissioners for England and Wales.

"The trustees" means the body of trustees for the time being as constituted by this scheme.

"St. Margaret's Parish" and "St. John's Parish" respectively mean and include the whole of the civil parishes of St. Margaret and St. John the Evangelist, Westminster.

"The vestry" means the united vestry of the parishes of Saint Margaret and St. John the Evangelist, Westminster, as constituted by the Metropolis Management (Battersea and Westminster) Act, 1887 (50 & 51 Vict. c. 17).

"The charities" means the three charities hereby constituted.

Vesting real
estate.

4. The lands, tenements, and hereditaments mentioned in the schedule hereto, are hereby vested in "The Official Trustee of Charity Lands" and his successors, in trust for the charities to which they belong respectively.

(a) All the schemes here given are schemes of the Charity Commissioners.

(b) These charities consisted of the Forrest and Grinsell Charities and the Vandon Charity. The Forrest and Grinsell Charities were apprenticing charities; the Vandon Charity was applicable, as to part, for nursing purposes, and as to the rest, for the poor generally.

5. All stocks, shares, funds, and securities now or hereafter belonging to or held in trust for any of the charities, and not already so transferred, shall be forthwith transferred, under the authority of a further order of the Commissioners, into the name of "The Official Trustees of Charitable Funds" in trust for the charities to which they belong respectively; and all sums of cash now or hereafter belonging to or held in trust for any of the charities, and not required for the current expenditure thereof, shall be forthwith invested, under the like authority, in Government stocks or securities, in the name of the official trustees, in trust for the charities to which they belong respectively.

App. II.
Scheme No. I.

Transfer of
personal
estate to
official trustees.

TRUSTEES.

6. The trustees shall consist of fourteen competent persons, Trustees.
namely:—

Two ex-officio trustees,
Six representative trustees, and
Six co-optative trustees.

7. No person shall be entitled to act as a trustee, whether upon his first or any subsequent appointment, until he shall have signed a declaration in the minute book of the trustees to the effect that he accepts and is willing to act in the trusts of this scheme. Declaration by trustees.

8. The ex-officio trustees shall be—

The rector for the time being of St. Margaret's parish, and
The rector for the time being of St. John's parish.

Ex-officio
trustees.

9. Representative trustees shall be appointed by the vestry. Representative trustees.
Three of them shall be selected from persons residing or carrying on business in St. Margaret's parish, and three of them shall be selected from persons residing or carrying on business in St. John's parish.

Each appointment shall be made at a meeting convened and held as nearly as may be in accordance with the ordinary rules or practice of the vestry. The first representative trustees shall be appointed as soon as conveniently may be after the date of the order establishing this scheme. The chairman or other presiding officer of each meeting at which the appointment of any representative trustees or trustee shall be made shall forthwith cause the names or name of the persons or person so appointed to be notified, in the case of a first appointment, to the rector of St. Margaret's parish, and in other cases to the chairman of the trustees or their clerk.

10. The following persons shall be deemed to be the first co-optative trustees under this scheme, viz.:— First co-optative trustees.

[The names and addresses are inserted here.]

The date hereof shall be deemed to be the date of their appointment.

11. Future co-optative trustees shall be persons residing or carrying on business in or near St. Margaret's parish or St. John's parish, and shall be provisionally appointed in each case by the trustees by a resolution passed at a special meeting to be held as soon as possible after the lapse of one calendar month from the occurrence of the vacancy to be filled up. Appointment of future co-optative trustees.

12. Every appointment, whether provisional or otherwise, of a trustee shall be forthwith notified by or under the direction of the trustees with all proper information to the Commissioners. Notification of appointments to commissioners.

13. A provisional appointment shall become valid if and when it shall have been approved by the Commissioners, and their approval certified under their official seal. The date of each appointment shall Approval of appointments by commissioners.

**App. II.
Scheme No. I.**

Term of office.

be the day on which it shall have been so approved by the Commissioners.

14. Every representative trustee shall be appointed to office for a term of five years, and every co-optative trustee shall be appointed to office for a term of seven years, reckoned in each case from the date of the appointment. Any representative or co-optative trustee who is absent from all meetings of the trustees during a consecutive period of two years shall thereupon cease to be a trustee.

**Determina-
tion of trus-
teeship.**

15. Any trustee who ceases to be qualified as aforesaid, or is adjudicated a bankrupt, or who refuses, or is unfit, or is incapacitated to act, or who communicates in writing to the trustees his wish to resign, shall thereupon cease to be a trustee.

Vacancies.

16. Upon the occurrence of a vacancy the trustees shall, at their next ensuing meeting, cause a note thereof to be entered in their minute book. They shall further, in the case of a vacancy in the office of representative trustee, cause notice thereof to be given as soon as conveniently may be to the vestry clerk. Any trustee may be re-appointed.

MEETINGS AND PROCEEDINGS OF TRUSTEES.

Quorum.

17. There shall be a quorum when five trustees are present at any meeting. Pending any vacancy, the trustees for the time being, not being less in number than a quorum, may act for all purposes under this scheme.

**Meetings of
trustees.**

18. The trustees shall hold at least four general meetings in each year, at such places in St. Margaret's parish or St. John's parish, or within a convenient distance therefrom, and at such dates, as they shall from time to time appoint.

**Special meet-
ings.**

19. The chairman, or any two trustees, may at any time summon a special meeting for any cause that seems to him or them sufficient.

**Notice of
meetings.**

20. Notice in writing of every meeting, whether general, special, or adjourned, shall be delivered or sent through the post to each trustee by the clerk, or by some other person acting under the direction of the trustees, or, in the case of a special meeting, by or under the direction of the person or persons summoning the meeting, three clear days at least before the date of the meeting, so far as, in the case of an adjourned meeting, the interval between the original and adjourned meetings will permit. Every notice of meeting shall state the place, day, and hour of the meeting, and every notice of a special meeting shall further state the matters to be discussed thereat.

**Adjournment
of meetings.**

21. If a quorum shall not have assembled within half-an-hour after the time appointed for any meeting, the trustees or trustee present, or the clerk, if no trustee be present, may adjourn the meeting. Any meeting may be adjourned by the chairman of the meeting upon the adoption of a resolution for its adjournment.

First meeting.

22. The first meeting of the trustees shall be summoned by the Rector of St. Margaret's, upon some day to be fixed by him, being within one calendar month from the date hereof, or if he shall fail to do so, by any two trustees. At this meeting the trustees shall make all necessary arrangements for the general conduct of the business of the charities, and for the appointment of officers.

Chairman.

23. The trustees shall, at their first ordinary meeting in every year, elect one of their number to be chairman of their meetings for the current year. They shall make regulations for supplying his place in case of his death, resignation, or absence. The chairman shall always be re-eligible.

24. Every matter shall be determined by the majority of the trustees present and voting on the question. The chairman of the meeting shall have a casting vote, whether or not he shall have previously voted on the same question, but no trustee shall in any other circumstances give more than one vote. **App. II.
Scheme No. I.
Voting.**

25. Any resolution of the trustees may be rescinded or varied from time to time by the trustees at a special meeting. **Rescinding
resolutions.**

26. The trustees may at any meeting appoint three or more members of their body to be a committee for making any inquiry, or for superintending or transacting any business, but every act and proceeding of a committee shall be submitted to a meeting of the trustees for approval. **Committees.**

OFFICERS AND GENERAL MANAGEMENT.

27. The trustees shall appoint some fit person to be their clerk. They may also appoint any other necessary or proper officers or agents for their assistance in the administration and management of the charities. Every appointment so made shall be revocable by the trustees at their pleasure. The trustees may pay to their clerk, and to their other officers and agents, not being trustees, such annual salaries or other remuneration as may from time to time be approved by the Commissioners. Subject as herein provided, the trustees shall from time to time prescribe and appoint the duties to be performed by their clerk and their other officers and agents. **Officers.**

28. The clerk shall conduct the correspondence and other business relating to the charities, shall summon, attend, and keep the minutes of all meetings of the trustees, shall keep the accounts of the charities, shall prepare and furnish the statements of such accounts, which the trustees are bound under the Charitable Trusts Acts, or otherwise, to render, and shall perform such other duties, not coming within the province of a professional legal adviser, as the trustees may reasonably require. **Clerk.**

29. A minute book shall be provided and kept by the trustees. Minutes of the entry into office of every new trustee, and of all proceedings of the trustees, shall be entered in the minute book, and shall be signed by the chairman at some future meeting, if they shall have been duly confirmed. **Minutes.**

30. Full and separate accounts shall be entered in proper books of account to be provided for the purpose, of all money received and paid respectively on account of each of the three charities. The books of account shall be made up for each year, and shall be examined and passed by the trustees at their first ordinary meeting in the ensuing year, or at some other meeting appointed for the purpose with the approval of the Commissioners, and shall be thereupon signed by the chairman of the meeting. All proper accounts in relation to the charities shall in each year be made out and certified, and copies thereof transmitted to the Commissioners, and published in conformity with the provisions of the Charitable Trusts Acts. **Accounts.**

31. A separate banking account for the purposes of each of the three charities shall be opened and kept with some fit bankers, to be from time to time selected by the trustees. Every sum of money received on account of the charities shall be forthwith paid in to the credit of the proper banking account, unless otherwise expressly ordered by the trustees. **Banking
account.**

32. All cheques and orders for the payment of money shall be signed by two or more of the trustees, and endorsed or countersigned by the clerk. **Cheques.**

**App. II.
Scheme No. I.****Custody of
documents.****General
power to
make regula-
tions.**

33. The trustees shall provide and cause to be deposited in some secure place a fireproof box or other receptacle, wherein shall be kept the deeds, muniments, vouchers, minute books, account books, and other documents of or relating to the charities, or any of them, together with a list in writing of the same, signed by the clerk.

34. Within the limits prescribed by this scheme the trustees shall have full power from time to time to make regulations for the conduct of their business and for the management and administration of the charities, and such regulations shall be binding on all persons affected thereby.

MANAGEMENT OF REAL PROPERTY.**Management
of real estate.**

35. All lands and houses belonging to the charities shall be let and otherwise managed by the trustees in conformity with the general law relating to the letting and management of property by trustees of endowed charities.

Allotments.

36. The trustees may set apart and let in allotments in the manner prescribed by and subject to the provisions of the Allotments Extension Act, 1882, any land belonging to the charities other than buildings and the appurtenances of buildings (a).

**Timber and
minerals.**

37. Any money arising from the sale of timber, or from any mines or minerals on the property of the charities, shall be treated as capital, and shall be invested in Government stocks or securities in the name of the Official Trustees of Charitable Funds, unless the Commissioners, or a competent Court, shall otherwise direct.

**Repairs and
insurance.**

38. The trustees shall keep in repair and insure against fire all the buildings of the charities not required to be kept in repair and insured by the lessees or tenants thereof.

APPLICATION OF INCOME.**Expenses of
management.**

39. The cost of repairs and insurance, and all other charges and outgoings payable in respect of each of the three charities, or of the endowment thereof, shall be first defrayed by the trustees out of the income thereof. The general costs, charges and expenses of and incidental to the administration and management of all the charities, shall be charged to and paid out of the income of the three charities proportionately.

**Goddard's
Prison
Charity.**

40. The trustees shall in every year pay or apply out of the income of the consolidated charity, a sum of twenty shillings for the benefit of poor prisoners in conformity with the provisions of a scheme established by the Commissioners on the 1st February, 1889, under the Prison Charities Act, 1882, for the administration of Joyce Goddard's Prison Charity.

**Qualification
of recipients.**

41. Subject as aforesaid, the net annual income of the charities shall be applied by the trustees for the benefit of poor and deserving persons resident in St. Margaret's parish or St. John's parish, and not in receipt of parochial relief, in conformity with the provisions hereinafter contained.

The Forrest and Grinsell Charity.**The Forrest
and Grinsell
Charity.**

42. The income of the Forrest and Grinsell Charity shall be applied for the benefit of children, being otherwise duly qualified as aforesaid, who are, and have for not less than five years been, scholars in some public elementary school or schools, and who have received from the managers of the school or schools such a certificate or certificates in writing of their good conduct, regularity in attendance, and proficiency during that period, as shall be satisfactory to the trustees.

(a) See sect. 14 of the Allotments Extension Act, 1882, *ante*, p. 695.

(A.) The said income shall be applied primarily in placing out children as apprentices to any suitable trade, business, occupation, or service, and in providing a suitable outfit for any child so apprenticed. Provided that the amount of the apprenticeship premium shall not in any case exceed 25*l.*, except with the sanction of the Commissioners, and that the trustees shall be at liberty to pay the premium in one or more sums at such intervals as to them may seem fit.

App. II.
Scheme No. I.
Apprenticing.

Beneficiaries under this sub-section must be children qualified as aforesaid who have reached the fourth standard of education under the existing code of minutes of the Education Department, or such other standard as may for the time being bear the same relation to the standard the reaching of which would entitle them, under the bye-laws in force for the time being of the school district in which they are respectively resident, to exemption from the legal obligation to attend school, as the said fourth standard bears to the existing exemption standard.

In apprenticing any child the trustees may stipulate for the repayment to them of the whole or any part of the apprenticeship premium out of any wages of the apprentice or otherwise; and may refuse to accept any master or mistress except upon the following conditions, viz.:—

- (i.) The permission of a probationary period, not exceeding three months, and either with or without wages, during which the child concerned shall be at liberty to recede from his or her engagement.
- (ii.) The permission of access to the place of employment of the apprentice concerned by an inspector (to be appointed by the trustees, and if necessary, paid out of the said income) at all such reasonable times and in such manner as he shall think fit, to enable him to inspect and report upon the condition, conduct, and diligence of the apprentice.
- (iii.) The inclusion in the instrument evidencing any contract of apprenticeship of such other conditions or stipulations as to half-time, evening instruction, or other matters as in the judgment of the trustees may be beneficial to the apprentice concerned, or otherwise advantageous to the charity.

The trustees may also grant to any apprentice who may be distinguished for good conduct, industry, and ability, such reward, not exceeding 5*l.* in any one case, as they may think fit, to be applied either by way of addition to any savings of income effected by him or her, or in paying the tuition fee of the apprentice concerned at any place of instruction approved by the trustees.

(B.) If and so far as the trustees shall be unable in any year, from want of duly qualified applicants, to apply the whole or any part of the

Technical
Education (a).

(a) The following are provisions for the management of an ordinary educational charity, taken from the Scheme for the Church and Town Estate, and other charities at Lowestoft.

THE EDUCATIONAL BRANCH.

60. . . . The income of this branch shall be applied by the trustees in the advancement, in one or more of the following ways, as they think fit, of the education of children who are *bond fide* resident in the parish, who are and have, for not less than the periods hereinafter respectively prescribed, been scholars in a public elementary school or schools,—and who have received from the managers of the school or schools such a certificate or certificates in writing of their

Advancement
of education.

**App. II.
Scheme No. I.**

said income in placing out children as apprentices as aforesaid, the same shall be applied in one or both of the following ways:—

- (i.) In the maintenance of exhibitions, each of a yearly value not exceeding 15*l.*, tenable by children, at any place of scientific instruction in the principles of technical or industrial work approved by the trustees.

Prizes.

good conduct, regularity in attendance, and proficiency during those periods respectively, as shall be satisfactory to the trustees, viz.:—

- (a) In granting prizes or rewards, not exceeding in value 1*l.* in any one case, to children qualified as aforesaid who have attended school for not less than two years.

Payments to encourage continuance at school.

- (b) In the award of payments, at the rate of not more than 5*l.* a year each, for the benefit of children qualified as aforesaid, who, in every case, have attended school for not less than five years, and have received from one of her Majesty's Inspectors of Schools certificates of having reached such a standard of education as would, under the byelaws in force for the time being in the school district in which such children are respectively resident, entitle them to exemption from the legal obligation to attend school. Every payment so awarded shall be made only so long as the child continues to attend a public elementary school, and to satisfy the trustees as to his or her continued good conduct, regularity in attendance, and proficiency.

Exhibitions for higher education.

- (c) In the maintenance of exhibitions, each of a yearly value not exceeding 10*l.*, tenable at any place of education higher than elementary, or of technical, professional, or industrial instruction approved by the trustees, or during the engagement of the holder as a pupil teacher in a public elementary school, and to be awarded to children qualified as aforesaid, who in every case have attended school for not less than six years, and have reached a standard of education higher than the standard, the reaching of which would so entitle them to exemption from the legal obligation to attend school as aforesaid. Each exhibition shall be awarded for such period, not being more than two years from the award, as the trustees think fit; such period may, whenever the trustees think fit, be from time to time extended, but so that no exhibition shall in any event be tenable for a period exceeding three years. The exhibitions shall be awarded and held under such regulations and conditions, and on the result of such examination as the trustees think fit. Every exhibition shall be given as the reward of merit, and shall, except as herein provided, be freely and openly competed for, and shall be tenable only for the purposes of education. Any exhibition for which there shall be no candidate, qualified for the same as aforesaid, who on examination shall be adjudged worthy to take it, shall for that turn not be awarded. If the holder of an exhibition shall, in the judgment of the trustees, be guilty of serious misconduct or idleness, or fail to maintain a reasonable standard of proficiency, or wilfully cease to pursue his or her education, the trustees may deprive him or her of the exhibition, and for this purpose may act on the report of the proper authorities of the school or place of education at which the exhibition is held, or on such other

- (ii.) In providing the like instruction for children, subject to the payment by them of suitable fees, at any school or institution in or near to St. Margaret's parish or St. John's parish established by, or maintained wholly or in part by, the trustees, with the assent of the Commissioners.

App. II.
Scheme No. I.

Provided that in the selection or administration of any place of instruction under the provisions of this clause, the trustees shall have special regard to the advancement, in connexion with their education, of the physical and social condition of the children to be benefited.

Beneficiaries under this sub-section must be children qualified as prescribed in the first paragraph of this clause who have reached the standard of education the reaching of which would entitle them under the byelaws in force for the time being of the school district in which they are respectively resident to exemption from the legal obligation to attend school.

Every exhibition under this scheme shall be awarded for such period, not being more than three years from the date of the award, as the trustees think fit; such period may, whenever the trustees think fit, be from time to time extended, but so that no exhibition shall, in any event, be tenable for a period exceeding five years. Every exhibition shall be given as the reward of merit, and shall, except as herein provided, be freely and openly competed for, and shall be tenable only for the purposes of education. If the holder of an exhibition shall, in the judgment of the trustees, be guilty of serious misconduct or idleness, or fail to maintain a reasonable standard of proficiency, or wilfully cease to pursue his or her education, the trustees may deprive him or her of the exhibition, and for this purpose may act on the report of the proper authorities of the school or place of education at which the exhibition is held, or on such other evidence as the trustees think sufficient, and for this purpose the decision of the trustees shall be final in each case. Subject as aforesaid, the exhibitions shall be awarded and held under such regulations and conditions, and on the result of such examination, as the trustees think fit.

The Vandon Charity.

43. The income of the Vandon Charity shall be applied in providing nurses for the benefit of sick persons being otherwise duly qualified as provided in clause 41 of this scheme. For this purpose the trustees may in any year pay over the whole or any portion of the said income to any society, association, or institution having for its object the provision of such nurses, upon receiving from the secretary or other officer thereof an undertaking in writing to apply the same in accordance with the provisions of this scheme, and to transmit to the trustees and to the Commissioners in every year an account of all moneys received and paid on account of the Vandon Charity. Subject as aforesaid the

The Vandon
Charity.

evidence as the trustees think sufficient, and for this purpose the decision of the trustees shall be final in each case.

The trustees shall, at their discretion, apply every sum awarded under the foregoing provisions in or towards paying the tuition fees of the child, or otherwise for his or her maintenance or benefit, or they shall deposit the same in a Savings Bank, or otherwise accumulate the same for his or her benefit.

Mode of
application.

9th November, 1888.

App. II. trustees may make such arrangements as they think fit for providing
Scheme No. I. such nurses as aforesaid.

The Consolidated Charity.

Continuation
of certain
periodical
payments to
present
recipients.

44. Any periodical payment to which any person was on the 18th December 1888 (the date of the first publication of a draft of this scheme), entitled, under the Charities of Joan Barnett, Mary Chapman, Robert Griffin, and Joan Hughes, shall be continued to him or her by the trustees out of the income of the consolidated charity unless and until such person shall be appointed to be a pensioner under the provisions hereinafter contained.

Consolidated
Charity.
Aid in sick-
ness, &c.

45. Subject as aforesaid, the income of the consolidated charity shall be applied in conformity with the following provisions:—

(A.) First, a sum of 100*l.* shall in every year be applied for the benefit of persons qualified as provided in clause 41 of this scheme, and suffering from sickness, accident, or infirmity, in any one or more of the following ways, as the trustees think fit, viz:—

- (i.) In providing nurses, or in subscriptions or donations to any association or institution having for its object the provision of nurses.
- (ii.) In subscriptions or donations to any hospital, dispensary, or other institution of a like character conducted wholly or in part upon the provident system.
- (iii.) In subscriptions or donations to any convalescent home or other institution of a like character.

General
benefit of
poor.

(B.) Secondly, the trustees may, in each year, apply such a sum, not exceeding 50*l.*, as they think fit, for the benefit of persons qualified as provided in clause 41 of this scheme, in one or more of the following ways:—

- (i.) Subscriptions or donations in aid of any club or society, conducted upon provident principles, for the supply of coal, clothing, or other necessities.
- (ii.) Subscriptions or donations in aid of any duly registered provident or friendly society.
- (iii.) Contributions towards the purchase of annuities, whether present or deferred, or in aid of any income or other means of support possessed by the recipient, which shall be proved to the satisfaction of the trustees to be properly secured, and to have been produced by his or her own exertions or providence.
- (iv.) Contributions towards the cost of passage or of outfit or otherwise in aid of persons desiring to emigrate.
- (v.) The supply of clothes, linen, bedding, fuel, tools, food, or other articles in kind, to an amount not exceeding 20*l.* in any one year.
- (vi.) The supply of temporary relief in money, by way of loan or otherwise, in cases of unexpected loss, or sudden destitution.
- (vii.) Grants towards the payment of life assurance premiums, or of subscriptions or payments to duly registered provident or friendly societies in cases where through prolonged sickness or other cause such premiums or subscriptions may have fallen into arrear (a).

Pensioners

(C.) Thirdly, pensions not exceeding six in number shall be estab-

(a) See *ante*, pp. 159, 160.

lished and paid by the trustees in conformity with the following provisions :—

App. II.
Scheme No. I.

- (i.) Each pension shall be of such an amount, being at the rate of not less than 6s. and not more than 8s. per week, as the trustees, having regard to the needs and circumstances of each pensioner, may from time to time determine. The pensions shall be payable by weekly or other instalments as the trustees think fit, but they may, in lieu of paying the whole amount of the pension to any pensioner in money, from time to time pay or apply the whole or any portion thereof for his or her benefit as they think fit. Amount and payment of pensions.
- (ii.) Every application for appointment as a pensioner shall be made to the trustees, or to their clerk, in writing, in such form as the trustees shall prescribe. Applications for appointment.
- (iii.) Poor men or women of good character, who have resided in St. Margaret's parish or St. John's parish for not less than five years next preceding the day on which the appointment is made, who have not during that period received poor law relief, and who from age, ill-health, accident, or infirmity, are unable to maintain themselves by their own exertions, shall be eligible for appointment: Provided that a preference shall be given to widows, and to those persons who, being otherwise qualified as aforesaid, have become reduced by misfortune from better circumstances. Qualifications.
- (iv.) No appointment of a pensioner shall be made by the trustees until a sufficient notice of the vacancy to be filled up, specifying the qualifications required from applicants (which may be in the form of notice annexed hereto), has been published in St. Margaret's parish and St. John's parish, by advertisement and otherwise, so as to give due publicity to the intended appointment; and every applicant must be prepared with sufficient testimonials and other evidence of his or her qualifications for appointment. Notice of vacancy.
- (v.) Every appointment of a pensioner shall be made by the trustees at a special meeting, and shall be made as soon as possible after an interval of not less than one calendar month from the occurrence of the vacancy to be filled up. Appointment of pensioners.
- (vi.) The trustees shall provide and keep a book, in which shall be entered the names, ages, and descriptions of all persons appointed to be pensioners, together with the dates of their respective appointments, and the date and occasion of every vacancy; and they shall likewise keep a register of all applications for appointment. Register.
- (vii.) If any pensioner is guilty of insobriety, insubordination, breach of regulations, or immoral or unbecoming conduct, or receives poor law relief, or becomes disqualified in the opinion of the trustees from retaining his or her appointment, or, if in any case it appears that a pensioner has been appointed without having the requisite qualifications, the trustees, upon proof thereof to their satisfaction, may remove the pensioner, and may proceed to appoint another pensioner in his or her place; or, in any case of such misconduct as aforesaid, the trustees may suspend the payment of the pension to the pensioners, either wholly or in part, during such time as they think fit. Removal of pensioners.
- (viii.) Each pension shall be granted for a term of three years in Pensions for three years.

**App. II.
Scheme No. I.**

the first instance, but may be prolonged by the trustees from time to time for a further period of not more than three years at each prolongation.

Surplus for
aid in sick-
ness, &c.

(D.) Any income of the consolidated charity not applied in any year under the foregoing provisions, shall be applied in augmentation of the annual sum of 100*l.* by sub-section (A.) of this clause directed to be applied for the benefit of persons suffering from sickness, accident, or infirmity.

Subscriptions
to institu-
tions.

No subscription or donation shall be given by the trustees under the provisions of this clause to any institution, club, or society, except upon such terms as shall enable them to secure the benefits thereof to the objects of the charity.

GENERAL PROVISIONS.

Variation of
payments.

46. Except as regards Joyce Goddard's Prison Charity, and the periodical payments mentioned in clause 44 hereof, the amounts and conditions of the several payments and allowances which are prescribed by this scheme may, with the sanction of the Commissioners, be from time to time varied by the trustees.

Appropriation
of benefits.

47. The appropriation of the benefits of the charities shall be made by the trustees from time to time, in the exercise of their discretion, at meetings of their body, and not separately by any individual trustee or trustees. The trustees shall be bound, in appropriating the benefits of the charities, to have regard to the wants of the poor of every part of St. Margaret's parish, and St. John's parish, and to satisfy themselves in each case that the beneficiaries are, in respect of poverty and character, deserving of help.

Employment
or tenancy of
trustees.

48. No trustee acting as clerk or in any other capacity for or on behalf of the charities, shall receive any salary or remuneration from the funds of the charities. No trustee shall, for his own benefit, or for the benefit of any other person, either directly or indirectly, hold or occupy any land of the charities, or any interest therein, or be engaged in the supply of work or goods at the cost of the charities.

Charities not
to be applied
in aid of
rates, &c.

49. No part of the income or of the endowments of the charities shall in any case be applied directly or indirectly in aid of any rates for the relief of the poor or other purposes in St. Margaret's parish or St. John's parish, and, except as regards the pensioners appointed under the provisions of this scheme, no individual or institution shall be entitled as of right to a periodical or recurrent benefit out of the income of the charities.

Scheme to be
printed.

50. The trustees shall cause this scheme to be printed and a copy to be given to every trustee and officer upon his appointment, and copies may be sold at a reasonable rate to all persons applying for the same.

Parishioners,
&c. may take
copies of
scheme.

51. Every parishioner and other person interested in the charities shall be at liberty to take copies of this scheme, or any part thereof, upon making application for that purpose to the trustees, or their clerk, at such reasonable times and subject to such reasonable conditions as may be fixed and prescribed by them.

Questions of
proceedings
under scheme.

52. Any question affecting the regularity or the validity of any proceedings under this scheme shall be determined conclusively by the Commissioners, upon such application made to them for the purpose as they think sufficient (a).

Construction
of scheme.

53. If any doubt or question shall arise amongst the trustees as to the construction or application of any of the provisions of this scheme, or the administration and management of the charities, they may apply

(a) See note (a) on next page.

to the Commissioners for their opinion and advice thereon, which when given shall be binding on the trustees and on all persons claiming under the trust who shall be affected by the question so decided (a).

App. II.
Scheme No. I.

FORM OF NOTICE.

In the Matter of the Consolidated Charity of the Parishes of
ST. MARGARET and ST. JOHN, WESTMINSTER.

The trustees of this charity give notice that they will on the day of 18, proceed to appoint a pensioner to fill a vacancy in the number of pensioners of the charity. The appointment will be made at o'clock on that day, at . Poor men or women of good character who are and have for not less than five years been resident in St. Margaret's or St. John's parish, who have not during that period received poor law relief, and who, from age, ill-health, accident, or infirmity are unable to maintain themselves by their own exertions, are eligible for the appointment, widows and those persons who have become reduced by misfortune from better circumstances, being entitled to a preference. The appointment will be for not more than three years, but may be renewed.

Application for appointment must be made in writing to the trustees or their clerk at ——— fourteen days at least previously to the appointment. Every applicant must state his or her name, address, age, and occupation, and must be prepared with sufficient testimonials and other evidence of his or her qualification for the appointment.

Signed,

} Clerk to
the
Trustees.

SCHEDULE OF ENDOWMENTS.

31st May, 1889.

SCHEME No. II.

(Poor.)

Scheme for the Management of Charities in the Parish of Buckland, in the County of Surrey (b).

1. From and after the date hereof, the above-mentioned charities and their respective endowments (the particulars of which are set out in the schedule hereto) shall be consolidated and shall be administered and managed by the body of trustees, hereinafter constituted, subject to and in conformity with the provisions of this scheme, under the title of "The Buckland Parochial Charity."

Administra-
tion of
charities.

2. Any land, or any term or estate in land holden in trust for the charity, not being copyhold, and not already so vested, shall be and the same is hereby vested in the official trustee of charity lands and his successors in trust for the charity.

Vesting real
estate.

3. All stocks, shares, funds, and securities belonging to or held in trust for the charity shall be forthwith transferred, under the authority of a further order of the Charity Commissioners, into the name of "The Official Trustees of Charitable Funds," in trust for the charity, and all sums of cash belonging to or held in trust for the charity, and not required for the current expenditure thereof, shall be forthwith in-

Transfer of
personal
estate to
official
trustees.

(a) This clause and clause 52 confer quasi-visitorial powers on the Charity Commissioners: *ante*, pp. 76, 77; and see *Re Hodgson's School*, 3 App. Cas. 857, stated *ante*, p. 616.

(b) The trusts of these charities were for the benefit of the poor generally.

App. II. vested, under the like authority, in government stocks or securities, in
Scheme No. II. the name of the said official trustees, in trust for the charity.

TRUSTEES.

- Trustees.** 4. The trustees shall consist of five competent persons, namely, three ex-officio trustees and two representative trustees.
- Declaration by trustees.** 5. No person shall be entitled to act as a trustee under this scheme, whether upon his first or any subsequent appointment, until he shall have signed a declaration in the minute book of the trustees to the effect that he accepts the office of trustee, and is willing to act in the trusts of this scheme.
- Ex-officio trustees.** 6. The ex-officio trustees shall be—
The Rector and Churchwardens for the time being of the parish of Buckland.
- Representative trustee.** 7. Representative trustees shall be appointed by the vestry of the parish of Buckland at a duly convened meeting. The first representative trustees shall be appointed as soon as conveniently may be after the date hereof. The chairman or other presiding officer of each meeting at which the appointment of any representative trustees or trustee shall be made shall forthwith cause the names or name of the persons or person so appointed to be notified to the rector of the parish of Buckland, or to the clerk or secretary of the trustees.
- Notification of appointments to commissioners.** 8. Every appointment of a trustee shall be forthwith notified by or under the direction of the trustees with all proper information to the said Commissioners at their office in London.
- Term of office.** 9. Every representative trustee shall be appointed to office for a term of five years reckoned from the date of his appointment. Any representative trustee who fails to attend any meeting of the trustees during a consecutive period of two years shall thereupon cease to be a trustee.
- Determination of trusteeship.** 10. Any trustee who is adjudicated a bankrupt, or who refuses or is unfit or is incapacitated to act, or who communicates in writing to the trustees his wish to resign, shall thereupon cease to be a trustee.
- Vacancies.** 11. Upon the occurrence of a vacancy the trustees shall, at their next ensuing meeting, cause a note thereof to be entered in their minute book. They shall further, in the case of a vacancy in the office of representative trustee, cause notice thereof to be given as soon as conveniently may be to the vestry of the parish of Buckland, or the clerk, if any, or other officer of such body. Any trustee may be re-appointed.

MEETINGS AND PROCEEDINGS OF TRUSTEES.

- Quorum.** 12. There shall be a quorum when three trustees are present at any meeting. Pending any vacancy, the trustees for the time being, not being less in number than a quorum, may act for all purposes in the administration of the charity.
- Special meetings.** 13. Any two trustees may at any time summon a special meeting for any cause that seems to them sufficient.
- Notice of meetings.** 14. Notice in writing of every meeting, whether general, special, or adjourned, shall be delivered or sent through the post to each trustee by the clerk or secretary, or by some other person acting under the direction of the trustees, or, in the case of a special meeting, by or under the direction of the person or persons summoning the meeting, seven clear days at least before the date of the meeting, so far as, in the case of an adjourned meeting, the interval between the original and adjourned meetings will permit. Every notice of meeting shall state the place, day, and hour of the meeting, and every notice of a special meeting shall further state the matters to be discussed thereat.

15. The rector of the parish of Buckland, if he be an acting trustee, shall be chairman of every meeting of the trustees at which he may be present.

App. II.
Scheme No. II.

16. Every matter shall be determined by the majority of the trustees present and voting on the question. The acting chairman shall have a casting vote, whether or not he shall have previously voted on the same question, but no trustee shall in any other circumstances give more than one vote.

Chairman.
Voting.

OFFICERS AND GENERAL MANAGEMENT.

17. The trustees may appoint one of their body or some other fit person to be their clerk or secretary, and any other necessary or proper officers or agents for their assistance in the administration and management of the charity, and may pay to their clerk or secretary and to their other officers and agents, not being trustees, such annual salaries or other remuneration as may from time to time be approved by the said Commissioners.

Officers.

18. A minute book and books of account shall be provided and kept by the trustees. All proper accounts in relation to the charity shall in each year be made out and certified, and copies thereof transmitted to the said Commissioners, and published, in compliance with the provisions of the Charitable Trusts Acts.

Minutes and
accounts.

19. Within the limits prescribed by this scheme the trustees shall have full power from time to time to make regulations for the conduct of their business and for the management of the charity, and such regulations shall be binding on all persons affected thereby.

General
power to
make regula-
tions.

MANAGEMENT OF REAL PROPERTY.

20. All lands belonging to the charity which are subject to the provisions of the fourth section of the Allotments Extension Act, 1882, shall be let and otherwise managed by the trustees in conformity with the provisions of that Act. If and so far as any land belonging to the charity is not subject to the provisions of the said fourth section, the trustees may set apart and let any portions of such land in allotments in the manner prescribed by and subject to the provisions of the said Act (a).

Allotments
Extension
Act, 1882.

21. Subject as aforesaid, all the property of the charity not required to be retained or occupied for the purposes thereof, shall be let and otherwise managed by the trustees. In every case public notice of the intention to let any land or other property shall be given by the trustees in the parish of Buckland, and also in the parish or parishes in which such land or property shall be situate, in such manner as they shall consider most effectual for giving full publicity to such intention. The trustees shall not create any tenancy in reversion, or for more than seven years certain, or for less than the improved annual value at rackrent, without the sanction of the said Commissioners or a competent Court.

Management
and letting of
property.

22. The trustees shall provide that on the grant by them of any lease, the lessee shall execute a counterpart thereof, and every lease shall contain covenants on the part of the lessee for the payment of rent, and the proper cultivation of the land, and all other usual and proper covenants applicable to the property comprised therein, and a proviso for re-entry on non-payment of the rent or non-performance of the covenants.

Leases.

(a) See sect. 14 of the Allotments Extension Act, 1882, *ante*, p. 695.

**App. II.
Scheme No. II.**

Expenses of
management.

Application
of income.

General
benefit of
poor.

APPLICATION OF INCOME.

23. All the proper costs, charges, and expenses of and incidental to the administration and management of the charity shall be first defrayed by the trustees out of the income thereof.

24. Subject to the payments aforesaid, all the yearly income of the charity shall be applied by the trustees in the manner and to the objects hereinafter prescribed.

25. The clear yearly income of the charity shall be applied by the trustees in making payments, under one or more of the following heads, for the benefit either of the poor of the parish of Buckland generally, or of such deserving and necessitous persons resident therein as the trustees shall select for this purpose, and in such way as they shall consider most advantageous to the recipients, and most conducive to the formation of provident habits:—

I. Subscriptions or donations in aid of the funds of any—

(a.) Dispensary, infirmary, hospital, or convalescent home, whether general or special, upon such terms as to enable the trustees to secure the benefits of the institution for the object of the charity.

(b.) Provident club or society established in or in the neighbourhood of the parish of Buckland for the supply of coal, clothing, or other necessities.

II. Contributions towards—

(a.) The provision of nurses for the sick and infirm.

(b.) The cost of the outfit, on entering upon a trade or occupation, or into service, of any person under the age of twenty-one years.

III. The supply of temporary relief in money, by way of loan or otherwise, in cases of unexpected loss, or sudden destitution (a).

Provided that the funds of the charity shall in no case be applied, directly or indirectly, in relief of the rates of the parish, or so that any individual or institution shall become entitled to a periodical or recurrent benefit therefrom.

GENERAL PROVISIONS.

Appropriation
of
benefits.

26. The appropriation of the benefits of the charity shall be made by the trustees from time to time in the exercise of their discretion at meetings of their body, and not separately by an individual trustee or trustees. The trustees shall be bound, in appropriating the benefits of the charity, to have regard to the wants of the poor of every part of the parish of Buckland, and to satisfy themselves in each case that the beneficiaries are, in respect of poverty and character, deserving of help.

Employment
or tenancy of
trustees.

27. No trustee acting as clerk or secretary, or in any other capacity in respect of the charity, shall receive any salary or remuneration from the funds of the charity. No trustee shall, except with the express sanction of the Charity Commissioners, for his own benefit, or for the benefit of any other person, either directly or indirectly, hold or occupy any land of the charity, or be engaged in the supply of work or goods at the cost of the charity.

Parishioners,
&c. may take
copies of
scheme.

28. A copy of this scheme shall be kept with the books of account and other documents belonging to the charity; and every parishioner and other person interested in the charity shall be at liberty to take copies of the scheme, or any part thereof, upon making application for

(a) See *ante*, pp. 159, 160.

that purpose to the trustees or their clerk, at such reasonable times and subject to such reasonable conditions as may be fixed and prescribed by them.

App. II.
Scheme No. II.

29. Any question affecting the regularity or the validity of any proceedings under this scheme shall be determined conclusively by the said Commissioners, upon such application made to them for the purpose, as they think sufficient (a).

Questions of
proceedings
under scheme.

30. If any doubt or question shall arise amongst the trustees, as to the construction or application of any of the provisions of this scheme, or the administration and management of the charity, they may apply to the said Commissioners for their opinion and advice thereon, which when given shall be binding on the trustees and on all persons claiming under the trust who shall be affected by the question so decided (a).

Construction
of scheme.

31. This scheme shall come into operation on the day on which it is approved and established by an order of the said Commissioners, which day is herein referred to as the date hereof.

Date of
scheme.

SCHEDULE.

10th May, 1889.

SCHEME No. III.

(Beneficiary Corporation (b); Almshouse.)

Scheme for the Management of Maynard and Cotton's Hospital and other Charities in the City of Canterbury.

1. The charity or charities with the benefactions and endowments thereof specified in the schedule hereto (hereinafter referred to as the charity), shall be administered and managed under the title of "Maynard and Cotton's Hospital," by the trustees of the municipal charities of the city and borough of Canterbury, as the trustees thereof, subject to and in conformity with the provisions of this scheme; and all sums which by the scheme for the management of the said municipal charities established by an order of the High Court of Justice (Chancery Division), of the 1st November, 1887, were directed to be paid to the master of Maynard's Hospital, the master of Maynard's and Cotton's Hospital, or the master and prior of Maynard's and Cotton's Hospital, shall be applied by the trustees under this scheme.

Administra-
tion of
charity.

2. The lands, tenements, and hereditaments specified in the schedule hereto, and all other real estates belonging to the charity, not being copyhold and not already so vested, shall be, and the same are hereby vested in the Corporation of the Brothers and Sisters of Maynard's Hospital or Foundation.

Vesting of
real property.

3. The brothers and sisters of Maynard's Hospital or Foundation shall permit the trustees to receive and take the annual and other rents, issues, and profits of all the real estates which may be vested in them, and from time to time to manage and let the same, and to use, order, and dispose of the goods and personal estate (if any) which may be held by them, in accordance with the provisions of this scheme; and for the purposes aforesaid, the brothers and sisters of Maynard's Hospital or Foundation shall, in their corporate capacity, make and execute all such deeds, leases, and other instruments, and do and perform all such acts as the trustees shall require (b).

Brothers and
sisters to
conform to
requirements
of trustees.

(a) These clauses confer quasi-visitatorial powers on the Charity Commissioners: *ante*, pp. 76, 77; and see *Re Hodgson's School*, 3 App. Cas. 857, stated *ante*, p. 616.

(b) See *ante*, p. 563.

**App. II.
Scheme
No. III.**

Trustees may
use corporate
name of the
brothers and
sisters.

4. The trustees shall be at liberty to use the corporate name of the said brothers and sisters for the purpose of bringing or defending such actions and other proceedings as the trustees shall think fit and shall be authorized to institute or defend, the brothers and sisters being saved harmless and indemnified therein out of the charity estates. The common seal of the hospital shall be kept by the clerk of the trustees. Subject as aforesaid, nothing in this scheme contained shall affect or prejudice the powers of the brothers and sisters, being inmates of Maynard and Cotton's hospital, and belonging to Maynard's foundation, to do all such acts as the brothers and sisters of Maynard's hospital or foundation are at present empowered to do by virtue of any prescription, usage or otherwise.

MANAGEMENT OF REAL PROPERTY.

Allotments
Extension
Act, 1882.

5. If and so far as any land belonging to the charity is not subject to the provisions of the fourth section of the Allotments Extension Act, 1882 (requiring certain lands to be let in allotments), the trustees may set apart and let in allotments in the manner prescribed by and subject to the provisions of the said Act, any portions of such land other than buildings and the appurtenances of buildings (a).

Management
and letting of
property.

6. Subject as aforesaid, all the property of the charity not required to be retained or occupied for the purposes thereof, shall be let and otherwise managed by the trustees. In every case public notice of the intention to let any land or other property (which may be in the form of Notice No. 1 annexed hereto) shall be given by the trustees in the City of Canterbury, and also in the parish or parishes in which such land or property shall be situate, in such manner as they shall consider most effectual for giving full publicity to such intention. The trustee shall not create any tenancy in reversion, or for more than seven years certain, or for less than the improved annual value at rackrent, without the sanction of the Charity Commissioners or a competent court.

Leases.

7. The trustees shall provide that on the grant by them of any lease the lessee shall execute a counterpart thereof; and every lease shall contain covenants on the part of the lessee for the payment of rent, and (where requisite) the proper cultivation of the land, and all other usual and proper covenants applicable to the property comprised therein, and a proviso for re-entry on non-payment of the rent or non-performance of the covenants.

Timber and
minerals.

8. Any money arising from the sale of timber, or from any mines or minerals on the property of the charity, shall be treated as capital, and shall be invested in Government funds or securities in the name of the official trustees, except in any special cases in which the trustees may be authorised by the Commissioners to deal otherwise with such money or any part thereof.

Repair and
insurance.

9. The trustees shall keep in repair and insure against fire all the buildings of the charity not required to be kept in repair and insured by the lessees or tenants thereof.

APPLICATION OF INCOME.

Expenses of
management.

10. The cost of ordinary repairs and insurance, and all other charges and outgoings payable in respect of the property of the charity, and all the proper costs, charges, and expenses of and incidental to the administration and management of the charity, shall be first defrayed by the trustees out of the income thereof.

(a) See sect. 14 of the Allotments Extension Act, 1882, *ante*, p. 695.

11. For the purpose of forming a fund for extraordinary repairs, the trustees shall, out of the income of the charity, remit a yearly sum of 25*l.*, until the fund shall amount to 250*l.*, to the banking account at the Bank of England of "The Official Trustees of Charitable Funds," who shall invest the same in their name in New Consols, at compound interest, and place the investments to the credit of an account to be entitled the "Repair Fund." The said fund shall be applicable to the extraordinary structural repair of the houses and property of the charity, and if and when the said sum of 250*l.*, or any part thereof, shall be so applied, the same shall be again made up in manner aforesaid to that amount.

App. II.
Scheme
No. III.
Repair fund.

12. The full number of brothers and sisters shall be ten, of whom four shall be brothers and six shall be sisters. Of this number three brothers and four sisters shall be regarded as belonging to Maynard's Foundation, and one brother and two sisters shall be regarded as belonging to Cotton's Foundation. The brothers and sisters shall be poor persons of good character, who shall have resided in Canterbury for not less than seven years next preceding the time of their appointment, who shall not, during that period, have received poor law relief, and who, from age, ill-health, accident, or infirmity, shall be unable to maintain themselves by their own exertions; with a preference for those persons who, being otherwise qualified as aforesaid, shall have become reduced by misfortune from better circumstances.

Number and
qualifications
of brothers
and sisters.

13. The brothers and sisters upon Maynard's Foundation shall be appointed by the trustees, and the brother and sisters upon Cotton's Foundation shall be appointed by the Mayor for the time being of Canterbury.

Appointments
of brothers
and sisters.

14. There shall be paid to each brother and sister out of the income of the charity, by weekly or other periodical payments as the trustees may think fit, such a stipend, being not less than at the rate of 8*s.*, and not more than at the rate of 12*s.* per week, as shall be fixed and determined from time to time by the trustees, having regard to the needs and circumstances of the respective brothers and sisters, and to the income and resources of the charity, and the other circumstances thereof; and the trustees, in lieu of paying the whole amount of the said stipend to any brother or sister in money may from time to time expend the whole or any portion thereof for his or her benefit as they shall think fit.

Stipends of
brothers and
sisters.

15. The hospital or almshouse building belonging to the charity, shall be appropriated and used for the residence of the brothers and sisters to be appointed from time to time by the trustees, in conformity with the provisions of this scheme, and the chapel forming part of the hospital shall continue to be used for the religious worship of the brothers and sisters.

Hospital.

16. No brother or sister shall be absent from the hospital for a period exceeding twenty-four hours, without the consent in writing of the trustees, or their clerk, but in special cases such consent may, for any sufficient reason, be given retrospectively after the absence has occurred.

Absence from
hospital.

17. No brother or sister shall be permitted to let or part with the possession of the room or rooms allotted to him or her, or to suffer any stranger to occupy the same, or any part thereof, except with the special permission of the trustees.

Rooms not to
be let.

18. The trustees may, if they shall so think fit, whenever the income and resources of the charity shall suffice for the purpose, Medical officer.

**App. II.
Scheme
No. III.**

appoint a medical officer to attend upon the brothers and sisters, and to supply them with medicines and such medical appliances as may be necessary, at a yearly salary to be fixed from time to time by the trustees, but not exceeding 10*l.* inclusive of the cost of such medicines and appliances; and they may also provide the brothers and sisters, at the cost of the charity, with any necessary attendance in case of illness or permanent infirmity.

**Applications
for appoint-
ment.**

19. Every application for appointment as a brother or sister upon Maynard's Foundation and upon Cotton's Foundation shall be made to the trustees, or to their clerk or secretary, and to the Mayor of Canterbury, respectively, in writing, in such form as the said trustees and Mayor shall prescribe.

**Notice of
vacancy.**

20. No appointment of a brother or sister shall be made by the trustees or the mayor until a sufficient notice of the vacancy to be filled up, specifying the qualifications required from candidates (which may be in the Form No. 2 annexed hereto) shall have been published in the City of Canterbury by advertisement or otherwise, so as to give due publicity to the intended appointment; and every applicant must be prepared with sufficient testimonials and other evidence of his or her qualification for the appointment.

**Mode of
appointments
of brothers
and sisters on
Maynard's
Foundation.**

21. All appointments of brothers and sisters on Maynard's Foundation shall be made by the trustees at a special meeting, and shall be made as soon as possible after an interval of not less than one calendar month from the occurrence of the vacancy to be filled up.

Register.

22. The trustees shall provide and keep a book, in which shall be entered the names, ages, and descriptions of all persons appointed to be brothers and sisters, together with the dates of their respective appointments, and the date and occasion of every vacancy; and they shall likewise keep a register of all applications for appointment on Maynard's Foundation.

**Removal of
brothers and
sisters.**

23. If any brother or sister shall be guilty of insobriety, insubordination, breach of regulations, or immoral or unbecoming conduct, or shall receive poor law relief, or shall, in the opinion of the trustees, become disqualified from retaining his or her appointment, or if in any case it shall appear that any brother or sister has been appointed without having the required qualifications, the trustees, upon proof thereof to their satisfaction, may remove the brother or sister and take possession of the tenement or room occupied by him or her, and another brother or sister may be appointed in his or her place; or in any case of such misconduct as aforesaid, the trustees may suspend the payment of the stipend to the brother or sister, either wholly or in part, during such time as they shall think fit.

Regulations.

24. The trustees may from time to time prescribe such reasonable regulations as they may consider expedient for the government of the brothers and sisters, provided that the same shall not be at variance or inconsistent with any of the provisions of this scheme.

**Appointment
of "Prior."**

25. The trustees shall appoint one of the brothers to the office of "Prior" of the hospital, the duties of which office shall consist of a general superintendence of the brothers and sisters, the reading of prayers in the hospital chapel, at such times as may be appointed by the trustees, and the discharge of such other functions as may be from time to time directed by the trustees. The trustees may pay to the Prior of the hospital, so long as he shall perform the duties of his office to the satisfaction of the trustees, in addition to his stipend as a brother, an allowance of not more than 2*s.* 6*d.* per week.

GENERAL PROVISIONS.

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Scheme
No. III.

26. The amounts and conditions of the several payments and allowances which are prescribed by this scheme may be varied from time to time by the trustees, with the sanction of the Commissioners.

Variation of
payments.
Appropriation
of
benefits.

27. The appropriation of the benefits of the charity shall be made by the trustees from time to time, in the exercise of their discretion, at meetings of their body, and not separately by any individual trustee or trustees. The trustees shall be bound, in appropriating the benefits of the charity, to have regard to the wants of the poor of every part of Canterbury, and to satisfy themselves in each case that the beneficiaries are, in respect of poverty and character, deserving of help.

28. No trustee acting as clerk or in any other capacity in respect of the charity, shall receive any salary or remuneration from the funds of the charity. No trustee shall, for his own benefit, or for the benefit of any other person, either directly or indirectly, hold or occupy any land of the charity, or any interest therein, or be engaged in the supply of work or goods at the cost of the charity.

Employment
or tenancy of
trustees.

29. No part of the income or of the endowments of the charity shall in any case be applied directly or indirectly in aid of any rates for the relief of the poor or other purposes in the City of Canterbury.

Charity not to
be applied in
aid of rates,
&c.

30. A copy of this scheme shall be kept with the books of account and other documents belonging to the charity, and every citizen and other person interested in the charity shall be at liberty to take copies of the scheme, or any part thereof, upon making application for that purpose to the trustees, or their clerk, at such reasonable times, and subject to such reasonable conditions as may be fixed and prescribed by them.

Citizens, &c.
may take
copies of
scheme.

31. Any question affecting the regularity or the validity of any proceedings under this scheme shall be determined conclusively by the Commissioners, upon such application made to them for the purpose, as they think sufficient (a).

Questions of
proceedings
under scheme.

32. If any doubt or question shall arise amongst the trustees as to the construction or application of any of the provisions of this scheme, or the administration and management of the charity, they may apply to the Commissioners for their opinion and advice thereon, which when given shall be binding on the trustees and on all persons claiming under the trust who shall be affected by the question so decided (a).

Construction
of scheme.

33. This scheme shall come into operation on the day on which it is approved and established by an order of the Commissioners.

Date of
scheme.

SCHEDULE OF PROPERTY.

FORM OF NOTICE. No. 1.

In the Matter of Maynard and Cotton's Hospital, in the City of Canterbury, in the County of Kent.

The trustees of this charity give notice that they will on — the — day of — proceed to let the under-mentioned —, being part of the property of the charity, as from the — day of —. Applications from persons desirous to become tenants of this property must be made in writing to the trustees or their clerk at —, on or before the — day of —.

Description.	Cultivation.	Extent.	Tenure.

(a) These clauses confer quasi-visitatorial powers on the Charity Commissioners. See *ante*, pp. 76, 77; and see *Re Hodgson's School*, 3 App. Cas. 857, stated *ante*, p. 616.

App. II.
Scheme
No. III.

FORM OF NOTICE. No. 2.

In the Matter of Maynard and Cotton's Hospital, in the City of Canterbury.

Notice is hereby given that [the trustees of this charity] [the mayor of Canterbury], will on — the — day of — 18—, proceed to elect a [brother] [sister] to fill a vacancy in the number of [brothers] [sisters] of the charity. The election will take place at — o'clock on that day, at —. Poor [men] [women] of good character who have been resident in Canterbury for seven years at least, who shall not during that period have received poor law relief, and who, from age, ill-health, accident, or infirmity are unable to maintain themselves by their own exertions, are eligible for the appointment, those persons who have become reduced by misfortune from better circumstances being entitled to a preference.

Application for the appointment must be made in writing to the [trustees or their clerk] [mayor] fourteen days at least previously to the election. Every applicant must state his or her name, address, age, and occupation, and must be prepared with sufficient testimonials and other evidence of his or her qualification for the appointment.

(Signed)

12th February, 1889.

SCHEME No. IV.

(Wesleyan Methodist Chapel and Minister's House.)

Scheme for the Management of the Wesleyan Methodist Chapel and Minister's House at Brompton in Kent.

So far as regards the ends and purposes of the trusts, the aforesaid chapel and minister's house and the appurtenances shall continue to be held upon and for the subsisting trusts thereof; and so far as regards the administration and management of the said charity, the said chapel and minister's house and the appurtenances shall henceforth be held and administered by the trustees thereof upon such and the same trusts, and to and for such and the same ends and purposes, and with, under, and subject to such and the same powers, provisoes, declarations, and agreements (so far as the same shall be applicable and capable of taking effect), as are expressed, declared, and contained in and by a certain indenture of release, bearing date the 3rd day of July, 1832, and made between John Sutcliffe and fourteen others of the first part, the Reverend George Marsden of the second part, and James Brown of the third part, and enrolled in the High Court of Chancery on the 25th day of July, 1832, being the trust deed for the settlement of the Wesleyan Methodist Chapel at Skircoat, in the parish of Halifax, and county of York, and usually known or distinguished as "The Wesleyan Chapel Model Deed" (a).

12th June, 1888.

(a) See *ante*, p. 121.

SCHEME No. V.

(Endowed Schools Acts—Grammar School.)

Scheme for the Management of the Foundation known as the Grammar School, in the Parish of Hitchin, in the County of Hertford, and the Endowments thereof.

1. The foundation and endowments above mentioned or referred to shall henceforth be one foundation, and shall be administered under this scheme, under the name of Hitchin Grammar School Foundation, hereinafter called the foundation. Future administration of foundation.

2. Subject as herein provided, the foundation shall be administered by a governing body, hereinafter called the governors, consisting of fifteen competent persons, duly qualified to discharge the duties of the office, ten to be called representative governors, and five to be called coöptative governors. Of the coöptative governors three always shall be women. Governing body.

3. The representative governors shall be appointed by the following electing bodies respectively in the following proportions; that is to say— Representative governors.

One by the council of Trinity College in the University of Cambridge;

Two by the governors of Rand's Foundation at Holwell, in the county of Bedford;

Five by the trustees of the charities in Hitchin, referred to in an order made under the Charitable Trusts Acts, 1853 to 1869, and dated the 19th day of June, 1877; and

for five years from the date of this scheme,

Two to be appointed by the donors or subscribers of land or money of the value of not less than 2*l.* in each case, and of not less than 3,000*l.* in all, given or paid within three calendar months from the date of this scheme, so as to become part of the foundation, or in place of such two governors if there are not such donors or subscribers so entitled to appoint as aforesaid, and in any case after such five years;

Two to be appointed by the parents of the day scholars in the schools of the foundation.

Each appointment by an electing body shall be made at a meeting thereof convened and held as nearly as may be in accordance with the ordinary rules or practice, if any, of such body, or in case of need or doubt in accordance with rules to be made or approved by the Charity Commissioners for England and Wales. The representative governors shall, subject as herein provided, be appointed to office each for the term of five years, reckoned from the date of the appointment. The first representative governors shall be appointed as soon as conveniently may be after the date of this scheme. The chairman or other presiding officer of each meeting at which the appointment of any representative governors or governor shall be made shall forthwith cause the names or name of the persons or person so appointed to be notified in the case of a first appointment to the governor whose name then stands first on the list of coöptative governors, and in other cases to the chairman of the governors or their clerk, if any, or other agent. Subject as aforesaid, any appointment of a representative governor not made as aforesaid within six calendar months from the date of this scheme,

**App. II.
Scheme
No. V.**

**Coöptative
governors.**

or of the notice hereinafter prescribed of a vacancy, as the case may be, shall for that turn be made by the then existing governors.

4. The first coöptative governors shall be :

[The names and addresses are inserted here.]

The future coöptative governors shall be appointed in each case by the general body of governors at a special meeting, by a resolution to be forthwith notified by them with all proper information to the Charity Commissioners for England and Wales, at their office in London ; but no such appointment shall be valid until it has been approved by such commissioners, and their approval certified under their official seal. The coöptative governors shall be appointed to office each for the term of eight years, reckoned in the case of a future coöptative governor from the date of the approval of his or her appointment.

Vacancies.

5. Any governor who shall become bankrupt or incapacitated to act, or shall notify in writing to the governors his or her wish to resign, or shall for the space of two consecutive years omit to attend any meeting, shall thereupon vacate the office of governor ; and the governors shall cause an entry to be made in their minute book of every vacancy caused as aforesaid, or by the death or the expiration of the term of office of any governor ; and as soon as conveniently may be after any vacancy a new governor shall be appointed by the body entitled as aforesaid to make such appointment. Any governor may be re-appointed. Notice of every vacancy of the office of representative governor shall be given as soon as conveniently may be, by or under the direction of the governors, to the proper electing body or the clerk, if any, or other agent of such body.

**Religious
opinions of
governors.**

6. Religious opinions, or attendance or non-attendance at any particular form of religious worship, shall not in any way affect the qualification of any person for being a governor under this scheme (a).

**Declaration
by governors.**

7. Every governor shall, at or before the first meeting which he or she attends upon his or her first or any subsequent entry into office, sign a memorandum declaring acceptance of the office of governor, and willingness to act in the trusts of this scheme, and until after signing such a memorandum shall not be entitled to act as a governor.

First meeting.

8. Within one calendar month from the time at which, under the provisions herein contained, the administration of the foundation passes to the governors, a meeting shall be held upon the summons of the governor whose name then stands first on the list of coöptative governors upon some day to be fixed by him. At this meeting the governors shall elect one of their number to be chairman of the meeting, and shall make arrangements for the conduct of business.

Meetings.

9. The governors shall hold their meetings in some convenient place in Hitchin or elsewhere, and shall hold at least two ordinary meetings in each year. Notice in writing of each ordinary meeting shall be delivered or sent by post to each governor by the clerk, if any, or by some other person acting under the direction of the governors at least seven days before such meeting.

**Special meet-
ings.**

10. The chairman or any two governors may at any time summon a special meeting for any cause that seems to him or them sufficient. All special meetings shall be convened by or under the direction of the person or persons summoning the meeting by notice in writing delivered or sent by post to each governor specifying the object of the meeting. And it shall be the duty of the clerk, if any, to give such notice when required by the chairman or by any two governors.

(a) The insertion of this clause is rendered compulsory (except in certain cases) by sect. 17 of the End. Schools Act, 1869, *ante*.

11. The governors shall, at their first ordinary meeting in each year, elect one of their number to be chairman of their meetings for such year. They shall make regulations for supplying his place in case of his death, resignation, or absence. The chairman shall always be re-eligible.

App. II.
Scheme
No. V.
Chairman.

12. There shall be a quorum when five governors are present at a meeting. Every question at a meeting, except as herein provided, shall be determined by the majority of the governors present and voting on the question, and in case of equality of votes the chairman shall have a second or casting vote. Any resolution of the governors may be rescinded or varied at a special meeting, held after not less than seven days' notice.

Quorum and
voting.

13. If at the time appointed for a meeting a sufficient number of governors to form a quorum are not present, or if at any meeting the business is not completed, the governors present may adjourn the meeting to a day and time, of which, if the meeting is adjourned for more than two days, notice shall forthwith be delivered or sent by post to each governor.

Adjournment
of meetings.

14. A minute book shall be provided and kept by the governors, and minutes of the entry into office of every new governor, and of all proceedings of the governors, shall be entered in such minute book.

Minutes.

15. The governors shall make out and render to the Charity Commissioners such accounts as shall be required by such Commissioners, and shall also, on rendering accounts for any year to such Commissioners, exhibit for public inspection in some convenient place in Hitchin copies of the accounts so rendered for such year, giving due public notice where and when the same may be seen, and shall at all reasonable times allow the accounts so rendered for any year or years to be inspected, and copies thereof or extracts therefrom to be made, by all persons applying for the purpose.

Accounts.

16. The governors may from time to time make such arrangements as they may find most fitting for the custody of all deeds and other documents belonging to the foundation, for deposit of money, for the drawing of cheques, and for the appointment of a clerk, or of any necessary agents for their assistance in the conduct of the business of the foundation, at such reasonable salaries or scale of remuneration as shall be approved by the Charity Commissioners, but no governor acting as such clerk or agent shall be entitled to any salary or remuneration.

Business
arrangements.

17. From and after the date of this scheme all lands, hereditaments, and estates and interests in lands and hereditaments belonging to the foundation, and not being copyhold, shall vest in the official trustee of charity lands and his successors in trust for the foundation: And all stock in the public funds and other securities belonging to the foundation shall be transferred to the Official Trustees of Charitable Funds in trust for the foundation.

Vesting pro-
perty.

18. The property of the foundation not occupied for the purposes thereof shall be let or otherwise managed by the governors, or by their agents acting under their orders, according to the general law applicable to the management of property by trustees of charitable foundations. All payments for repairs, rates, taxes, and insurance of or in respect of any such property occupied for the purposes of the foundation shall, so far as not otherwise provided for, be made out of the income of the foundation.

Management
and letting of
property.

19. Any money arising from the sale of timber, or from any mines or minerals on the estates of the foundation, shall be treated as capital, and shall be invested in the name of the Official Trustees of Charitable

Timber and
minerals.

**App. II.
Scheme
No. V.**

Transfer of
administra-
tion of
foundation to
governors.

Funds, under the direction of the Charity Commissioners, except in any special cases in which the governors may be authorised by such commissioners to deal otherwise with such money or any part thereof.

20. Until the completion of the full number of governors or the expiration of the first three calendar months, or further time, if any, allowed under this clause, from the date of this scheme, the present governing body shall remain unaltered and shall retain such powers as will enable them to administer the foundation in the meantime under this scheme, but on such completion or expiration, whichever first happens, shall become *ipso facto* discharged from their office, and the administration of the foundation shall pass to the governors. Such period of three calendar months may be extended, if necessary, by an order of the Charity Commissioners, made upon the application of one or more of the present governing body, or of the governors.

Governors
may act
although body
not full.

21. After the administration of the foundation has passed to the governors as aforesaid the governors for the time being, if a quorum is formed, may act for all the purposes of this scheme although the number of governors as hereinbefore constituted is not full.

Carrying
scheme into
effect.

22. The governors shall take all proper measures for carrying the provisions of this scheme into effect as soon as practicable.

THE SCHOOLS.

Schools for
boys and
girls.

23. The grammar school of the foundation shall be maintained under this scheme as a school for boys. There shall also be established and maintained under this scheme a school for girls, hereinafter called the girls' school. These schools shall be maintained in or near the parish of Hitchin.

School build-
ings.

24. As soon as conveniently may be, the governors shall provide for the schools proper buildings, suitable in the case of each school for 100 scholars or thereabouts, and respectively planned with a view to convenient extension, and may apply for the purpose a sufficient sum of money to be raised, if needful, out of the capital endowment of the foundation by sale or otherwise, but for all the purposes of this clause they shall act subject to the approval of the Charity Commissioners.

Religious
exemptions.

25. The parent or guardian of, or person liable to maintain or having the actual custody of, any scholar attending either school as a day scholar may claim by notice in writing addressed to the head master or head mistress of such school the exemption of such scholar from attending prayer or religious worship, or from any lesson or series of lessons on a religious subject, and such scholar shall be exempted accordingly; and a scholar shall not, by reason of any exemption from attending prayer or religious worship, or from any lesson or series of lessons on a religious subject, be deprived of any advantage or emolument in either school or out of the endowment of the foundation to which he or she would otherwise have been entitled (a).

If the parent or guardian of, or person liable to maintain or having the actual custody of, any scholar who is about to attend either school, and who but for this clause could only be admitted as a boarder, desires the exemption of such scholar from attending prayer or religious worship, or from any lesson or series of lessons on a religious subject, but

(a) The insertion of this clause is rendered compulsory (except in certain cases) by sect. 15 of the End. Schools Act, 1869, *ante*.

the persons in charge of the boarding houses of such school are not willing to allow such exemption, then it shall be the duty of the governors to make proper provisions for enabling the scholar to attend such school, and have such exemption as a day scholar, without being deprived of any advantage or emolument to which he or she would otherwise have been entitled (*b*).

If any teacher, in the course of other lessons at which any scholar exempted under this clause is in accordance with the ordinary rules of either school present, shall teach systematically and persistently any particular religious doctrine, from the teaching of which any exemption has been claimed, as in this clause before provided, the governors shall, on complaint made in writing to them by the parent, guardian, or person liable to maintain or having the actual custody of such scholar, hear the complainant, and inquire into the circumstances, and if the complaint is judged to be reasonable, make all proper provisions for remedying the matter complained of (*c*).

26. Subject to the foregoing provision, religious instruction in accordance with the principles of the christian faith shall be given in each school under such regulations as shall be made from time to time by the governors. No alteration in any such regulations shall take effect in either school until the expiration of not less than one year after notice of the making of the alteration shall have been given by the governors in such manner as they shall think best calculated to bring the matter within the knowledge of persons interested in such school (*d*).

Religious in-
struction.

27. No teacher in either school shall be a governor.

Teachers not
to be go-
vernors.

THE GRAMMAR SCHOOL.

28. There shall be a head master of the grammar school. He shall be a graduate of some university in the United Kingdom (*e*). Every head master shall be appointed by the governors at a special meeting to be held, in the case of the first appointment as soon as conveniently may be after buildings are provided for the school as aforesaid, and in other cases as soon as conveniently may be after a vacancy, or after notice of an intended vacancy. In order to get the best candidates, the governors, before making any appointment, shall give public notice of the vacancy, and invite applicants for the office by advertisements in newspapers, or by such other means as they may judge best calculated to secure the object.

Head master.
Appointment.

29. The governors may dismiss the head master without assigning cause, after six calendar months' written notice given to him in pursuance of a resolution passed at two special meetings held at an interval of not less than fourteen days, such resolution being affirmed at each meeting by not less than two-thirds of the governors present and voting on the question (*f*).

Dismissal.

(*b*) The insertion of this clause is rendered compulsory (except in certain cases) by sect. 16 of the End. Schools Act, 1869, *ante*.

(*c*) The insertion of this clause is rendered compulsory (except in certain cases) by sects. 15 and 16 of the End. Schools Act, 1869, *ante*.

(*d*) The insertion of the latter part of this clause is rendered compulsory by sect. 11 of the End. Schools Act, 1869, *ante*.

(*e*) See sect. 18 of the End. Schools Act, 1869, *ante*.

(*f*) See sect. 22 of the End. Schools Act, 1869, *ante*.

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Scheme
No. V.**

30. The governors for what in their opinion is urgent cause may, by a resolution passed at a special meeting and affirmed by not less than two-thirds of the whole number of governors for the time being, declare that the head master ought to be dismissed from his office, as in this clause provided, and in that case they may appoint a second special meeting to be held not less than a week after the first, and may by a like resolution, passed at such second meeting and affirmed by not less than two-thirds of the whole number of governors for the time being, thereupon absolutely and finally dismiss him. And, if, at the first of such meetings the governors think fit at once to suspend the head master from his office until the second of such meetings, they may so suspend him by resolution affirmed by not less than two-thirds of the whole number of governors for the time being. Full notice and opportunity of defence at both such meetings shall be given to the head master.

**Declaration
by head
master.**

31. Every head master before taking office under this scheme shall sign a declaration, to be entered in the minute book of the governors, to the following effect:—

"I, declare that I will always to the best of my ability discharge the duties of head master of the boys' school of the Hitchin Grammar School Foundation during my tenure of the office, and that if I am removed therefrom, I will thereupon acquiesce in such removal, and relinquish all claim to the mastership and its future emoluments, and deliver up to the governors, or as they direct, possession of all the property of the school then in my possession or occupation."

**Head master's
official resi-
dence.**

32. The head master shall dwell in the residence, if any, assigned for him. The occupation and use of such residence and of any other property of the foundation occupied by him as head master, shall be had by him in respect of his official character and duties, and not as tenant, and if he is removed from his office he shall deliver up possession of such residence and other property to the governors, or as they direct. He shall not, except with the permission of the governors, permit any person not being a member of his family to occupy such residence or any part thereof.

**Head master
not to have
other employ-
ment.**

33. The head master shall give his personal attention to the duties of the school, and shall not hold any benefice having the cure of souls, or undertake any office or employment which, in the opinion of the governors, may interfere with the proper performance of his duties as head master.

**Masters not to
receive other
than autho-
rised fees.**

34. No head master or assistant master shall receive or demand from any boy in the school, or from any person whomsoever on behalf of any such boy, any gratuity, fee, or payment, except such as are prescribed or authorized by or under this scheme.

**Jurisdiction
of governors
over school
arrangements.**

35. Within the limits fixed by this scheme, the governors shall prescribe the general subjects of instruction, the relative prominence and value to be assigned to each group of subjects, the arrangements respecting the school terms, vacations, and holidays, the payments of day scholars, and the number and payments of boarders. They shall take general supervision of the sanitary condition of the school buildings and arrangements. They shall fix the number of assistant masters to be employed. They shall every year fix the amount which they think proper to be paid out of the income of the foundation for the purpose of maintaining assistant masters and providing and maintaining a proper school plant or apparatus.

36. Before making any regulations under the last foregoing clause, the governors shall consult the head master in such a manner as to give him full opportunity for the expression of his views. The head master may also from time to time submit proposals to the governors for making or altering regulations concerning any matter within the province of the governors. The governors shall fully consider any such expression of views or proposals, and shall decide upon them.

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Scheme
No. V.

Views and
proposals of
head master.

37. Subject to any rules prescribed by or under the authority of this scheme, the head master shall have under his control the choice of books, the method of teaching, the arrangement of classes and school hours, and generally the whole internal organisation, management, and discipline of the school, including the power of expelling boys from the school, or suspending them from attendance thereat, for any adequate cause to be judged of by him, but on expelling or suspending any boy he shall forthwith report the case to the governors.

Jurisdiction
of head master
over school
arrangements.

38. The head master shall have the sole power of appointing and may at pleasure dismiss all assistant masters (*a*), and shall determine, subject to the approval of the governors, in what proportions the sum fixed by the governors for the maintenance of assistant masters and school plant and apparatus shall be divided among the various persons and objects for which it is fixed in the aggregate. And the governors shall pay the same accordingly either through the hands of the head master or directly as they think best.

Assistant
masters and
payments for
school objects.

39. The head master shall receive a fixed yearly stipend of 150*l*. He shall also receive a capitation payment calculated on such a scale, uniform or graduated, as may be fixed from time to time by the governors, at the rate of not less than 2*l*. nor more than 5*l*. a year for each boy in the school.

Income of
head master.

40. All boys, including boarders, except as herein provided, shall pay tuition fees to be fixed from time to time by the governors, at the rate of not less than 6*l*. nor more than 12*l*. a year for any boy. No difference in respect of tuition fees shall be made between any scholars on account of place of birth or residence, or of being or not being boarders. The payments of boarders, apart from the tuition fees, shall be at the rate of not more than 45*l*. for any boy. No extra or additional payment of any kind shall be allowed without the sanction of the governors and the written consent of the parent, or person occupying the place of parent, of the scholar concerned. All payments for tuition fees shall be made in advance to the head master, or to such other person as the governors shall from time to time fix, and shall be accounted for by the person receiving them to the governors, and be treated by them as part of the general income of the foundation.

Boarding and
tuition fees.

41. No boy shall be admitted to the school under the age of eight years. No boy shall remain in the school after the age of seventeen years, or, if he attains that age during a school term, then after the end of such term, except with the permission of the governors, which in special cases may be given until the age of eighteen years upon the written recommendation of the head master.

Ages for
school.

42. Subject to the provisions established by or under the authority of this scheme, the school and all its advantages shall be open to all boys of good character and sufficient health who are residing with their parents, guardians, or near relations within degrees to be fixed by the

To whom
school is open.

(*a*) See sect. 22 of the End. Schools Act, 1869, *ante*.

**App. II.
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No. V.**

	governors, or are boarding under regulations approved by the governors. No boy not so residing or boarding shall be admitted to the school without the special permission of the governors. If there is not room for all boys found fit for admission as hereinafter provided, preference shall be given to such of them as are children of inhabitants of any of the parishes or places of Holwell, Ickleford, Pirton, and Lower Stondon.
Application for admission.	43. Applications for admission to the school shall be made to the head master, or to some person appointed by the governors, according to a form to be approved by them and delivered to all applicants.
Register of applications.	44. The head master or some person appointed by the governors shall keep a register of applications for admission, showing the date of every application and of the admission, withdrawal, or rejection of the applicant, and the cause of any rejection, and the age of each applicant.
Entrance examination.	45. Every applicant for admission shall be examined by or under the direction of the head master. The head master shall appoint convenient times for that purpose, and give reasonable notice to the parents or next friends of the boy to be so examined. No boy shall be admitted to the school except after undergoing such examination and being found fit for admission. Subject as aforesaid, those who are so found fit shall, if there is room for them, be admitted in order according to the dates of their application. The examination for admission shall be graduated according to the age of the boy, and shall be regulated in other particulars from time to time by or under the direction of the governors, but it shall never fall below the following standard; that is to say:— Reading; Writing from dictation; Sums in the first four simple rules of arithmetic, with the multiplication table.
Secular instruction.	46. Besides religious instruction as hereinbefore provided, instruction shall also be given in the school in the following subjects:— Reading, writing, and arithmetic; Geography and history; English grammar, composition, and literature; Mathematics; Latin; At least one modern foreign European language; Natural science; Drawing, drill, and vocal music. Greek may be taught at an additional fee at the rate of not less than 3 <i>l.</i> a year for each boy. Subject to the foregoing provisions, the course of instruction shall be according to the classification and arrangements made by the head master.
Yearly examination.	47. There shall be once in every year an examination of the scholars by an examiner or examiners appointed or approved for that purpose by the governors, but otherwise unconnected with the school. The day of examination shall be fixed by the governors after consulting the head master. The examiner or examiners shall report in writing to the governors on the proficiency of the scholars and on the condition of the school, as regards instruction and discipline, as shown by the result of the examination. The governors shall send a copy of the report to the head master and to the Charity Commissioners.
Head master's yearly report.	48. The head master shall make a report in writing to the governors yearly at such time as they shall direct on the general condition and

progress of the school, and on any special occurrences during the year. He may also mention the names of any of the boys who, in his judgment, are worthy of reward or distinction, having regard both to proficiency and conduct.

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No. V.

49. The governors may award prizes of books or other suitable rewards as marks of distinction to any boys mentioned as worthy of reward or distinction by the head master or by the examiner or examiners.

Prizes.

THE GIRLS' SCHOOL.

50. The girls' school shall be subject to the like provisions as are contained in the foregoing clauses relating to the grammar school, except that the head mistress need not be a graduate of any university. For the purposes of this clause, such foregoing clauses shall be read as if the following modifications were made therein, namely, "mistress" for "master," and "girl" for "boy," with any consequent modifications.

General provisions as for grammar school.

51. The fixed yearly stipend to be received by the head mistress of the girls' school, apart from the capitation payment, shall be 100% of the income of a head mistress.

Income of head mistress.

52. The subjects of instruction in the girls' school, besides religious instruction as hereinbefore provided, shall be :—

Instruction

Reading, writing, and arithmetic;
Geography and history;
English grammar, composition, and literature;
French and German;
One or more branches of natural science;
Algebra;
Geometry;
Domestic economy and laws of health;
Drawing, drill, and vocal music; and

such other subjects as the governors may from time to time fix. Other modern foreign languages may be taught at such additional fees as the governors may fix from time to time.

SCHOLARSHIPS AND EXHIBITIONS.

53. Scholarships, to be called Foundation Scholarships, shall be maintained in each of the two schools in the form of exemptions, total or partial, from the payment of tuition fees. The number of such scholarships shall be thirty-two, or as near that number as the income of the foundation will allow. Not less than half of the scholarships shall be in the form of total exemptions. The two schools shall share in the number of scholarships in the form of total exemptions and the number of scholarships in the form of partial exemptions respectively rateably according to the number of boys and the number of girls in the two schools respectively. In each school one-fourth of the scholarships shall be open only to boys or girls, as the case may be, who are and have for not less than three years been scholars in any of the public elementary schools in Hitchin, and one-fourth shall be open only to boys or girls, as the case may be, who are and have for not less than three years been scholars in any of the public elementary schools in the parishes or places of Holwell, Ickleford, Pirton, and Lower Stondon, but so that of such last-mentioned one-fourth two scholarships shall always be limited to such boys or girls from such schools in the parish of Holwell. The scholarships open only to boys or girls in the public elementary schools in this clause aforesaid, shall be awarded on the result of the examination for admission to the schools respectively.

Scholarships.

**App. II.
Scheme
No. V.**

The other scholarships shall be awarded on the result of the examination for admission to the schools respectively, or of the yearly examination, but no such scholarship shall be awarded to any scholar already in either school, unless the head master or head mistress of such school shall report in writing that the scholar is deserving of it by reason of his or her character and good conduct.

Exhibitions.

54. The governors may, if the income is sufficient, maintain exhibitions, tenable elsewhere at any place of advanced education approved by them, and to be awarded on the result of the yearly examination or such other examination as the governors think fit to boys or girls who then are and have for not less than three years been in either school.

General conditions as to scholarships and exhibitions.

55. The scholarships and exhibitions shall be established in such manner and order as to secure as nearly as may be a regular rotation of award, and, subject as herein provided, shall be awarded and held under such regulations and conditions as the governors think fit. Every scholarship and exhibition shall be given as the reward of merit, and shall, except as herein provided, be freely and openly competed for, and shall be tenable only for the purposes of education. Any scholarship or exhibition for which there shall be no candidate qualified for the same as aforesaid, who, on examination, shall be adjudged worthy to take it, shall for that turn not be awarded.

Deprivation.

56. If the holder of a scholarship or exhibition shall, in the judgment of the governors, be guilty of serious misconduct or idleness, or fail to maintain a reasonable standard of proficiency, or wilfully cease to pursue his or her education, the governors may deprive him or her of the scholarship or exhibition, and for this purpose, in the case of an exhibition held elsewhere, may act on the report of the proper authorities of the school or place of education at which the exhibition is held, or on such other evidence as the governors think sufficient. Under this clause the decision of the governors shall be final in each case.

GENERAL.

Pension fund.

57. The governors may, if they think fit, and the income at their disposal suffice for the purpose, agree with the head master of the grammar school for the formation of a fund in the nature of a pension or superannuation fund, the main principles of such agreement being that the head master and the governors respectively shall contribute yearly for a period of twenty years such sums as may be agreed on; that these contributions shall accumulate at compound interest; that in case the head master serves his office for such twenty years he shall, on his retirement, be entitled to the whole accumulated fund; that in case he retires earlier on account of permanent disability from illness, he shall also be entitled to the whole of the same fund; that in all other cases he shall, on his ceasing to be head master, be entitled to the amount produced by his own contributions. The governors may make a like agreement with the head mistress of the girls' school. If any question shall arise upon the construction or working of the provisions of this clause, the same shall be referred by the governors to the Charity Commissioners whose decision thereon shall be final and conclusive.

Repairs and improvements fund.

58. A sum of 1,000*l.*, Three per Cent. Government Stock, belonging to the foundation, or as near that sum as practicable, shall be placed to a separate account, entitled "Repairs and Improvements Fund." The income of such fund shall be paid to the governors and applied by them in ordinary repairs or improvements of property used for the purposes of the schools, and if not wanted for that purpose shall be

accumulated for the like purpose in any future year or years. Until the income of the Repairs and Improvements Fund amounts to 30% a year, it shall be made up to that amount out of the general income of the foundation.

App. II.
Scheme
No. V.

59. Subject to the payment of the expenses of management of property and business, and of any necessary or proper outgoings, any income of the foundation not applied under the foregoing provisions, and not needed as a balance to meet current expenses, may be applied in improving the accommodation or convenience of the school buildings, or premises, or generally in extending or otherwise promoting the objects and efficiency of the schools, and so far as not applied shall, on passing the yearly accounts, be invested in the name of the Official Trustees of Charitable Funds in trust for the foundation in augmentation of its endowment.

Residue.

60. The governors may receive any additional donations or endowments for the general purposes of the foundation. They may also receive donations or endowments for any special objects connected with the foundation which shall not be inconsistent with or calculated to impede the due working of the provisions of this scheme. Any question arising upon this last point shall be referred to the Charity Commissioners for decision.

Further
endowments.

61. Within the limits prescribed by this scheme, the governors shall have full power from time to time to make regulations for the conduct of their business and for the management of the foundation, and such regulations shall be binding on all persons affected thereby.

General
power of
governors to
make regu-
lations.

62. Any question affecting the regularity or the validity of any proceeding under this scheme shall be determined conclusively by the Charity Commissioners, upon such application made to them for the purpose as they think sufficient (a).

Question of
proceedings
under scheme.

63. If any doubt or question arises among the governors as to the proper construction or application of any of the provisions of this scheme, the governors shall apply to the Charity Commissioners for their opinion and advice thereon, which opinion and advice when given shall be binding on the governors, and on all persons claiming under the foundation who shall be affected by the question so decided (a).

Construction
of scheme.

64. So far as relates to the foundation, all jurisdiction of the ordinary relating to or arising from the licensing of masters in any endowed school is hereby abolished (b).

Jurisdiction
of ordinary
abolished.

65. No person shall be disqualified for being a master in either school by reason only of his not being, or not intending to be, in Holy Orders (c).

Masters not to
be required to
be in Holy
Orders.

66. The Charity Commissioners may, from time to time, in the exercise of their ordinary jurisdiction, frame schemes for the alteration of any portion of this scheme, provided that such schemes be not inconsistent with anything contained in the Endowed Schools Act, 1869, and Amending Acts (d).

Alteration of
scheme.

67. Nothing in this scheme shall affect any order of the Charity Commissioners now in force, so far as it makes provision for the discharge of any mortgage debt on any property of the foundation, or for the replacement of any stock or money advanced out of the funds

Foundation to
be governed
exclusively by
this scheme.

(a) These clauses confer quasi-visitatorial jurisdiction on the Charity Commissioners. See *ante*, pp. 76, 77; see also *Re Hodgson's School*, 3 App. Cas. 857, stated *ante*, p. 616.

(b) The insertion of this clause is rendered compulsory by sect. 21 of the End. Schools Act, 1869, *ante*.

(c) This clause is rendered compulsory (except in certain cases) by sect. 18 of the End. Schools Act, 1869, *ante*.

(d) See sect. 28 of the End. Schools Act, 1869, *ante*.

App. II. Scheme No. V.	of the foundation. From and after the date of this scheme the foundation shall for every purpose, except as in this scheme provided, be administered and governed wholly and exclusively in accordance with the provisions of this scheme, notwithstanding any former or other scheme, Act of Parliament, Charter, or letters patent, statute, or instrument relating to the subject-matter of this scheme.
Scheme to be printed and sold.	68. The governors shall cause this scheme to be printed, and a copy to be given to every governor, head master, and assistant master, head mistress, assistant mistress, and teacher, upon their entry into office respectively, and copies may be sold at a reasonable price to all persons applying for the same.
Date of scheme.	69. The date of this scheme shall be the day on which her Majesty by Order in Council declares her approbation of it.

1888.

SCHEME No. VI.

(Endowed Schools Acts, Application of Non-educational Charity to Educational Purposes (a).)

This Scheme deals with Sponne's Charity, in the Parish of Towcester, in the County of Northampton.

Part of endowment to be applied for advancement of education.	1. It is hereby declared with the consent of the governing body that it is desirable to apply for the advancement of education part of the endowment of this foundation as follows, that is to say, the piece of land described in the schedule hereto, and a yearly sum of 50 <i>l.</i> out of the income of this foundation.
Union with another foundation.	2. From the date of this scheme so much of the endowment of this foundation as is hereby made applicable for the advancement of education shall be part of the foundation governed by a scheme made under the Endowed Schools Act, 1869, and Amending Acts, under the name of the Towcester Grammar School, and shall be administered under that scheme accordingly.
Vesting property.	3. From the date of this scheme the said piece of land shall vest in the Official Trustee of Charity Lands and his successors in trust for the said Towcester Grammar School.
Payment to another foundation.	4. From the date of this scheme the yearly sum of 50 <i>l.</i> hereby made applicable for the advancement of education shall be paid by the governing body of this foundation to the governors of the said Towcester Grammar School.
Alteration of scheme.	5. The Charity Commissioners may from time to time in the exercise of their ordinary jurisdiction frame schemes for the alteration of any portions of this scheme, provided that such schemes be not inconsistent with anything contained in the Endowed Schools Act, 1869, and Amending Acts (b).
Date of scheme.	6. The date of this scheme shall be the day after the date of the said other scheme.

12th May, 1887.

SCHEDULE.

(a) End. Schools Act, 1869, s. 30, *ante*.

(b) See sect. 28 of the End. Schools Act, 1869, *ante*.

SCHEME No. VII.

(Prison Charity.)

App. II.
Scheme
No. VII.*Scheme for the Administration of Lady Catherine Barnardiston's Prison Charity, in the City of London.*

1. The annual income of the charity, consisting of the sum mentioned in the schedule hereto, shall be applied by the Court of Aldermen of the City of London, as the present trustees thereof, for the benefit of deserving and necessitous prisoners, who have been confined in any prison to which the Prison Act, 1877, applies, upon their discharge from prison, or, in the case of youthful offenders who have been subsequently detained in a certified reformatory school, upon their discharge from such school, in one or more of the following ways, as the trustees think fit, viz. :—

Benefit of
discharged
prisoners.

- (a) In providing them with clothing or other necessities;
- (b) In assisting them to return to their homes;
- (c) In aiding them to earn an honest livelihood, either by assisting them to obtain employment, or to learn a trade or handicraft, or by apprenticing them, or by loans or gifts of tools, stock in trade, money, or otherwise;
- (d) In assisting them to go to sea as sailors, or to emigrate.

Provided that beneficiaries shall not be selected from any prison or reformatory school until the trustees have given to the proper authorities thereof an opportunity to make recommendations, and have duly considered such recommendations if made.

2. In selecting the beneficiaries the trustees shall prefer such prisoners as have been committed to prison from the Central Criminal Court District. Preference.

3. The trustees, in lieu of applying the income of the charity as hereinbefore directed, may in any year pay it over to any duly certified Discharged Prisoners Aid Society, upon receiving from the secretary or other officer of any such society an undertaking in writing to apply the same in accordance with the provisions of this scheme, and to transmit to the Charity Commissioners and to the Secretary of State for the Home Department in every year an account of all moneys received and paid by the society on account of the charity. Power to pay over income to Discharged Prisoners Aid Societies.

8th February, 1889.

SCHEME No. VIII.

(Dissolved Municipal Corporation (a).)

Scheme for the Administration of the Property of the Dissolved Corporation of the Mayor and Burgesses of the Borough of Bradninch, in the County of Devon.

1. From and after the date of this scheme, all the property mentioned in the schedule hereto, and all other property of the above-mentioned dissolved corporation, or of any person as member or officer thereof, or of any Court or judge thereof whose jurisdiction is abolished Administration of trust.

(a) See the Municipal Corporations Act, 1883, *ante*.

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Scheme
No. VIII.**

- by the Municipal Corporations Act, 1883, shall be administered and managed by the body of trustees hereinafter constituted, subject to and in conformity with the provisions of this scheme, under the title of "The Bradninch Town Trust;" and all powers and duties conferred or imposed by any local Act of Parliament (including a provisional order confirmed by Parliament) on, and all trusts administered by the said corporation, or any officers or nominees of such corporation, either alone or jointly with any other persons, shall vest in and be exercised and performed and administered by the said trustees.
- Definitions.** 2. In this scheme, unless the context otherwise requires—
The expression "the trust" means the Bradninch Town Trust.
The expression "the Commissioners" means the Charity Commissioners for England and Wales.
The expression "the trustees" means the body of trustees for the time being as constituted by this scheme.
- Vesting of real estate.** 3. All lands, hereditaments, and estates and interests in lands and hereditaments, belonging to the trust, not being copyhold, shall be and the same are hereby vested in "The Official Trustee of Charity Lands" and his successors, for the benefit of the trust.
- Transfer of stocks, &c. to official trustees, and investment of cash.** 4. All stocks, shares, funds and securities belonging to or held in trust for the purposes of the trust shall be forthwith transferred, under the authority of a further order of the commissioners, into the name of "The Official Trustees of Charitable Funds" for the benefit of the trust; and all sums of cash belonging to or held for the benefit of the trust, and not required for the current expenditure thereof, shall be forthwith invested, under the like authority, in government stocks or securities in the name of the said official trustees, for the benefit of the trust.
- Vesting of other property.** 5. All the property of the trust, except such as is mentioned in clauses three and four hereof, shall be vested in the persons who are for the time being trustees under this scheme.

TRUSTEES.

- Trustees.** 6. The trustees shall consist of nine competent persons, namely, two ex-officio trustees, three representative trustees, and four coöptative trustees.
- Declaration by trustees.** 7. No person shall be entitled to act as a trustee under this scheme, whether upon his first or any subsequent appointment, until he shall have signed a declaration in the minute book of the trustees to the effect that he accepts the office of trustee and is willing to act in the trusts of this scheme.
- Ex-officio trustees.** 8. The ex-officio trustees shall be the two elected guardians for the time being representing the parish of Bradninch, in the Poor Law Union of Tiverton.
- Representative trustees.** 9. Representative trustees shall be appointed by the vestry of the parish of Bradninch, at a meeting convened and held as nearly as may be in accordance with the ordinary rules or practice, if any, of that body, or, in case of need or doubt, in accordance with rules to be made or approved by the commissioners. The first representative trustees shall be appointed as soon as conveniently may be after the date of this scheme. The chairman or other presiding officer of each meeting at which the appointment of any representative trustees or trustee shall be made, shall forthwith cause the names or name of the persons or person so appointed to be notified, in the case of a first appointment, to Charles Thomas Cuming, and in other cases to the chairman of the

trustees or their clerk. Any appointment of a representative trustee not made as aforesaid within six calendar months from the date of this scheme, or of the notice hereinafter prescribed of a vacancy as the case may be, shall for that turn be made by the then existing trustees.

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Scheme
No. VIII.

10. The following persons shall be deemed to be the first coöptative trustees under this scheme, viz. :—

First co-
öptative
trustees.

(The names and addresses are inserted here.)

The term of office of the first coöptative trustees shall be reckoned from the date hereof.

11. Future coöptative trustees shall be persons residing or carrying on business in or near Bradninch, and shall be provisionally appointed in each case by the trustees by a resolution passed at a special meeting, to be held as soon as conveniently may be after the lapse of one calendar month from the occurrence of the vacancy to be filled up.

Appointment
of future
coöptative
trustees.

12. Every appointment, whether provisional or otherwise, of a trustee shall be forthwith notified by or under the direction of the trustees with all proper information to the commissioners at their office in London.

Notification
of appoint-
ments to com-
missioners.

13. A provisional appointment shall become valid if and when it shall have been approved by the commissioners, and their approval certified under their official seal. The date of each appointment shall be the day on which it shall have been so approved by the commissioners.

Approval of
appointments
by commis-
sioners.

14. Every representative trustee shall be appointed to office for a term of five years reckoned from the date of his appointment, and every coöptative trustee shall be appointed to office for a term of eight years, reckoned, except as aforesaid, from the date of the approval of his appointment. Any representative or coöptative trustee who is absent from all meetings of the trustees during a consecutive period of two years, shall thereupon cease to be a trustee.

Term of office.

15. Any trustee who ceases to be qualified as aforesaid, or is adjudicated a bankrupt, or who refuses or is unfit or is incapacitated to act, or who communicates in writing to the trustees his wish to resign, shall thereupon cease to be a trustee.

Determina-
tion of
trusteeship.

16. Upon the occurrence of every vacancy caused as aforesaid, or by death or the expiration of the term of office of any trustee, the trustees shall, at their next ensuing meeting, cause a note thereof to be entered in their minute book. They shall further, in the case of a vacancy in the office of representative trustee, cause notice thereof to be given as soon as conveniently may be to the proper electing body or their clerk, if any, or other officer of such body. Any trustee may be re-appointed.

Vacancies.

MEETINGS AND PROCEEDINGS OF TRUSTEES.

17. There shall be a quorum when four trustees are present at any meeting. Pending any vacancy, the trustees for the time being, not being less in number than a quorum, may act for all purposes in the administration of the trust.

Quorum.

18. The trustees shall hold general meetings at least twice in each year, at such times and at such places in the parish of Bradninch, or within a convenient distance therefrom, as they shall from time to time appoint.

Meetings of
trustees.

19. The Chairman, or any two trustees, may at any time summon a special meeting for any cause that seems to him or them sufficient.

Special
meetings.

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Scheme
No. VIII.**
- Notice of meetings.** 20. Notice in writing of every meeting, whether general, special, or adjourned, shall be delivered or sent through the post to each trustee, by the clerk or by some other person acting under the direction of the trustees, or, in the case of a special meeting, by or under the direction of the person or persons summoning the meeting, three clear days at least before the date of the meeting, so far as, in the case of an adjourned meeting, the interval between the original and adjourned meetings will permit. Every notice of meeting shall state the place, day, and hour of the meeting, and every notice of a special meeting shall further state the matters to be discussed thereat.
- Adjournment of meetings.** 21. If a quorum shall not have assembled within half an hour after the time appointed for any meeting, the trustees or trustee present, or the clerk, if no trustee be present, may adjourn the meeting. Any meeting may be adjourned by the chairman upon the adoption of a resolution for its adjournment.
- First meeting.** 22. The first meeting of the trustees shall be summoned by the said Charles Thomas Cuming upon some day to be fixed by him being within two calendar months from the date of this scheme, or if he shall fail to do so, by any two trustees. At this meeting the trustees shall make all necessary arrangements for the general conduct of the business of the trust, and for the appointment of officers.
- Chairman.** 23. The trustees shall, at their first ordinary meeting in every year, elect one of their number to be chairman of their meetings for the current year. They shall make regulations for supplying his place in case of his death, resignation, or absence. The chairman shall always be re-eligible.
- Voting.** 24. Every matter shall be determined by the majority of the trustees present and voting on the question. The chairman shall have a casting vote, whether or not he shall have previously voted on the same question, but no trustee shall in any other circumstances give more than one vote.
- Rescinding resolutions.** 25. Any resolution of the trustees may be rescinded or varied from time to time by the trustees at a special meeting.

OFFICERS AND GENERAL MANAGEMENT.

- Officers.** 26. The trustees shall appoint one of themselves or some other fit person to be their clerk. They may also appoint any other necessary or proper officers or agents for their assistance in the administration and management of the trust. Every appointment so made shall be revocable by the trustees at their pleasure. The trustees may pay to their clerk, and to their other officers and agents not being trustees, such annual salaries or other remuneration as may from time to time be approved by the commissioners. Subject as herein provided, the trustees shall from time to time prescribe and appoint the duties to be performed by their clerk, and their other officers and agents.
- Clerk.** 27. The clerk shall conduct the correspondence and other business relating to the trust, shall summon, attend, and keep the minutes of all meetings of the trustees, shall keep the accounts of the trust, shall prepare and furnish the statements of such accounts which the trustees will on the establishment of this scheme be bound under the Charitable Trusts Acts, or otherwise, to render, and shall perform such other duties, not coming within the province of a professional legal adviser, as the trustees may reasonably require.
- Minutes.** 28. A minute book shall be provided and kept by the trustees. Minutes of the entry into office of every new trustee, and of all pro-

ceedings of the trustees, shall be entered in the minute book, and shall be signed by the chairman of the meeting, either at the conclusion thereof, or at some future meeting, if they shall have been duly confirmed.

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29. Full accounts shall be entered in proper books of account, to be provided for the purpose, of all money received and paid respectively on account of the trust. Such books of account shall be made up for each year, and shall be examined and passed by the trustees at their first ordinary meeting in the ensuing year, or at some other meeting appointed for the purpose with the approval of the commissioners, and shall be thereupon signed by the chairman of the meeting. All proper accounts in relation to the trust, shall in each year be made out and certified, and copies thereof transmitted to the commissioners, and published in conformity with the provisions of the Charitable Trusts Acts.

Accounts.

30. A banking account for the purposes of the trust shall be opened and kept with some fit bankers, to be from time to time selected by the trustees. Every sum of money received on account of the trust, shall be forthwith paid in to the credit of that account, unless otherwise expressly ordered by the trustees.

**Banking
account.**

31. All cheques and orders for the payment of money shall be signed by one or more of the trustees, and endorsed or countersigned by the clerk.

Cheques.

32. The trustees shall provide and cause to be deposited in some secure place, a fireproof box or other receptacle, wherein shall be kept the deeds, muniments, vouchers, minute-books, accounts, and other documents of or relating to the trust, together with a list in writing of the same, signed by the clerk.

**Custody of
documents.**

33. Within the limits prescribed by this scheme the trustees shall have full power from time to time to make regulations for the conduct of their business and for the management of the trust, and such regulations shall be binding on all persons affected thereby.

**General power
to make regu-
lations.**

APPLICATION OF PROPERTY.

34. The trustees shall provide for the following payments out of the capital endowment of the trust:—

**Payments out
of endow-
ment.**

To Mr. Frederic Burrow the capital sum of 200*l.* due on mortgage of Crows Ash :

To "The Official Trustees of Charitable Funds" in trust for the Bradninch Bread Charities the sum of 130*l.* :

To Mr. Frederic Burrow, late town clerk and clerk to the magistrates of the borough of Bradninch, the sum of 134*l.* 3*s.* 4*d.*, or other sum as compensation for deprivation of the profits of those offices, in accordance with such order as shall be made by the Local Government Board in respect thereof :

To the Bradninch Royal Jubilee Fund the sum of 200*l.* :

And for these purposes the trustees shall raise, under the authority of a separate order of the commissioners, and in the case of the compensation to Mr. Burrow, subject to the order of the Local Government Board, a sufficient sum by sale or mortgage of one or more of the following properties belonging to the trust, namely, Bussell's Orchard, Crows Ash, and the Bradninch Waterworks.

APPLICATION OF INCOME.

35. The yearly income of the trust shall be applied by the trustees as follows:—

**Application
of income.**

First, in defraying the cost of repairs and insurance, and all out-

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Scheme
No. VIII.**

goings payable in respect of the property of the trust, and all proper expenses of and incidental to the administration and management of the trust.

Secondly, in paying the interest accruing due on all debts of the trust, and in providing, with the sanction of the commissioners, a sinking fund for the repayment of such debts.

Thirdly, in maintaining the Town Hall as a reading room and place of recreation and assembly for the inhabitants of Bradninch.

Fourthly, in accumulating the residue and in applying the accumulations from time to time to any of the above-mentioned purposes, or otherwise, with the sanction of the commissioners, for the public benefit of the inhabitants of Bradninch.

MANAGEMENT OF PROPERTY.

**Exhibition
and inspection
of chattels
and deeds.**

36. The trustees shall cause the chattels and such of the deeds and documents of the late Corporation of Bradninch as they shall think fit to be safely kept and permanently exhibited in the town hall or reading room, and shall allow any reasonable application for permission to inspect and copy any of the deeds and documents.

**Rules for
town hall and
reading room.**

37. The trustees shall be at liberty to prescribe from time to time suitable rules for the conduct of the town hall and reading room, and of all persons resorting thereto, and the terms and conditions upon which the said town hall and reading room shall be used in conformity with the provisions of this scheme.

**Repair and
insurance.**

38. The trustees shall keep in repair and insure against fire all the buildings of the trust not required to be kept in repair and insured by the lessees or tenants thereof.

**General
management.**

39. Except as herein provided, all the property of the trust not required to be retained or occupied for the purposes thereof shall be let and otherwise managed by the trustees according to the general law applicable to the management of property by Trustees of Charitable Foundations.

[Clauses 40—47 contained general provisions corresponding to clauses 46—53 of Scheme No. 1, *ante*, except that no clause similar to clause 49 of that scheme was inserted.]

SCHEDULE.

5th March, 1889.

APPENDIX III.

ATTORNEY-GENERAL v. MOISES (a).

Chanc. Div.—Jessel, M. R.

(17 May, 1879.)

An ancient charitable corporation was regulated by a scheme contained in an Act of Parliament, which provided that the directions of the Court might, whenever needed, be obtained by application in a certain information. Under the Act the charity was partly educational and partly non-educational, but less than one-half was applicable to education. The corporation refused to assent to a scheme being framed under the Endowed Schools Acts appointing new trustees and altering the mode of dealing with the estates, and it subsequently presented a petition to the Court asking that alterations might be made in the existing scheme.

Held, that the jurisdiction of the Court was not excluded by the Endowed Schools Acts; that the corporation was the governing body; that there was no power to frame a scheme under sect. 24, sub-s. (3) of the Endowed Schools Act, 1869, appointing new trustees of the non-educational part of the endowment, where the governing body refused to assent; that sect. 6 of the Endowed Schools Act, 1874, consequently did not apply; and that the Court would not refuse to exercise its jurisdiction, because, if the corporation had assented, a scheme might have been made under the Endowed Schools Acts.

THIS was a petition presented in an old information of *Att.-Gen. v. Moises* commenced in 1832.

The Master and Brethren of the Hospital of St. Mary the Virgin, in the borough of Newcastle-on-Tyne, were an ancient charitable corporation, the original object of which was "the support of the poor in free alms."

The corporation was endowed with landed property, which had largely increased in value, and there was a considerable surplus not required for the purposes of the original foundation. In order to provide for the disposition of the increased revenue, an Act of Parliament (9 & 10 Vict. c. 42) was passed in 1846, by which a new scheme for dealing with the property was established. The substance of this scheme was that the surplus income should be applied in the establishment of certain schools.

The 28th clause of the scheme provided that the Court of Chancery should "have power from time to time to make fresh rules and orders for the management of the charity estates, and the appropriation of the income thereof, and for the general regulation of the hospital and the master and brethren thereof, and the chapel and almshouses belonging to the same, and the schools which may be maintained or established out of the income thereof, and from time to time to repeal

(a) Extracted from the files of the Charity Commissioners.

App. III. or vary any of the present or future rules or orders, and to make others in lieu thereof."

The 47th section of the Act directed that the charity should be regulated according to that scheme, or by such amended rules and regulations as should be thereafter approved of by the Court of Chancery.

Sect. 52 provided that the master of the hospital should manage, let, and set the charity estates, and receive the income thereof, and cause proper accounts to be kept.

Sect. 57 enacted that in all cases in which the master and brethren were respectively authorised to do any act, and so forth, and in all other cases when the direction of the Court should be necessary, such direction should be obtained on motion or petition in the above-mentioned information of *Att.-Gen. v. Moises*. And by the 58th section it was provided that all applications which might be made under the provisions of the Act to the Court of Chancery should be made in the suit of *Att.-Gen. v. Moises*, and in the matter of the Act, and should be made on due notice to the Attorney-General, who should be at liberty to attend the same.

The present petition was presented by the master and brethren in pursuance of the Act for the purpose of obtaining the directions of the Court with regard to the application of certain funds in Court belonging to the charity, representing the purchase-money of a portion of the charity estate purchased by the Corporation of Newcastle, and for obtaining also various directions with regard to the regulation of the charity.

The petition prayed—(1) that further directions might be given for the application of the funds in Court, and of the surplus income of the charity; (2) that inquiries should be made whether the existing scheme should be amended; (3) that trustees should be appointed jointly with the master for the management of the charity estates; and (4) that provision should be made for the erection of a board-room, offices, and residence for the use of the master, for the transaction of the business of the hospital, and for the custody of its muniments and papers.

The questions raised by the case appear from the judgment.

Jessel, M. R.—I cannot help thinking that a great deal of the discussion I have heard to-day has had more relation to the costs of the petition, about which I have not heard anything in form just now, than what is proper to be done. The first point to be decided is, whether I have jurisdiction to do what is asked. Now I must first of all consider the facts, which are now plain. If any other formal evidence is required of them, it should be put in. I have not examined the affidavits, but I assume the statement of counsel to be sufficiently proved. There is really no dispute as to the facts. Having considered what the facts are, I shall then consider the application of the various Acts of Parliament to those facts. [His Lordship then stated the facts, and the provisions of the Act above mentioned, and proceeded:—]

Now, this petition is presented by the master and brethren, and it asks for directions pursuant to the Act. It is by petition under the Act; and notice has been given to the Attorney-General. It is, therefore, exactly right in every respect, unless either the Act has been repealed, or some enactment has been passed taking away the powers of the Court under the provisions of the Act. It is quite clear that under that Act of Parliament the Court has power to give new directions as to the management, setting, and letting of the estate, and also

power to give directions as to the vesting of the legal estate, and for that purpose to appoint new trustees, or give any other directions which the Court may think right to give.

Now, the master says this:—"The duties imposed on me by the Act of Parliament are very onerous, the estates are increasing in value; they are becoming available for building purposes; and I desire that the management of these estates shall be vested in a body of trustees, of whom I shall be one, to relieve me to a great extent both from trouble and responsibility."

Assuming there is nothing else in the subsequent legislation, that clearly is the proper course to take. The usual course in modern times in the Court of Chancery, or the Chancery Division, is to put the management of charity estates into a body of trustees, who are gentlemen from the neighbourhood. That is the usual course, and it has been considered and found in practice to be the best course, and the best way of managing the estates. That being so, it is clearly the proper application to make, and one which should be acceded to, unless there is some reason to the contrary.

Now it is said, first of all, that the jurisdiction conferred on the Court by the Act of Parliament in question, has been taken away by subsequent Acts. Secondly, it is said that even if the jurisdiction is not taken away, it is undesirable, having regard to the subsequent legislation, to exercise it.

First of all I must consider what the position of this endowment is. It is clear from what I have said, without going into the details of the scheme, that it is what is commonly called a mixed endowment. There is the old foundation, which is non-educational, with provision for a master and brethren, and there is the endowment out of certain portions of the rents of certain portions of the property, especially the school-house, which is for educational purposes; and to that extent it is an educational endowment.

That being so, we must consider what the rights of the Charity Commissioners, who have succeeded to the rights and powers of the Endowed Schools Commissioners, are under the Acts of Parliament I am going to mention. Sect. 4 of the Endowed Schools Act, 1869, defines "endowment" in the most general language. It is, "any property whatever." The 7th section defines what a governing body is. It includes, among other things (omitting immaterial words), any body corporate who have the right of holding any endowment. The endowment in the present case consists of land, which is vested in the master and brethren, an ancient corporation, who have the power to hold it under the Act of Parliament, and to apply the rents, partly in repairs, partly in certain payments to the master and brethren, and partly in certain other payments to the Corporation of Newcastle, for the purposes of the school; there are also some consols representing the proceeds of sale of land. Clearly, to my mind, the corporation of the master and brethren is the governing body within the definition. The 24th section of the Act of 1869 says this, "Where part of the endowment is an educational endowment within the meaning of this Act, and part of it is applicable or applied to other charitable uses, the scheme shall be in conformity with the following provisions, except so far as the governing body of such endowment assent to a scheme departing therefrom." In this case the master tells me, through his counsel, and I do not want an affidavit after the correspondence which has taken place (which is verified), that he will not assent to the Charity Commissioners exercising any power of dis-

APP. III.

placing him from the management of the charity lands, or appointing new trustees to be associated with him.

Sub-section 3 of the same 24th section, says, "If the proportion applicable to other charitable uses exceeds a half of the whole endowment the governing body of such endowment existing at the date of the scheme shall, as far as regards its non-educational purposes, remain unaltered by the scheme." Now, looking at the facts of the present case, there can be no doubt that one-half, and more than one-half, of the endowment is not applicable to educational purposes. The total sum which the scheme allows to be applied for educational purposes at present consists of sums amounting to 440*l.* and 150*l.*, which are now paid, and another 150*l.* which may be hereafter payable. Assuming that the second 150*l.* is now payable, that is, that there is a sufficient fund to pay it, which does not appear to be the case, the total is 740*l.* On the other hand, the salary of the master is 500*l.*, those of the eight brethren, matron, and doorkeeper, amount to 272*l.* 10*s.* It is plain that 772*l.* is more than 740*l.* It is argued that I can take into account the value of the school buildings, which cost several thousand pounds. But the master says, "On the other hand, you must take the value of the hospital, and chapel, and so on (which are larger buildings, and no doubt of much greater value), and if you take them both into account there would not be a half applicable to educational purposes." But besides that, there is a surplus income—consols now in Court—which may be disposed of by the order which I am going to make, which will very much increase the disproportion. I suppose that by this Act I must look at the actual state of the fund, and therefore I ought to take into account that there is, at the present moment, an actual surplus over and beyond that which I have mentioned, which is not applicable at present.

That being so, it is clear to my mind that there is more than a half not applied to educational purposes. Consequently sub-sect. 3 applies.

It is plain, therefore, that if there were no other Act the corporation, through its head, refusing to assent, the commissioners could not, by any scheme whatever, appoint new trustees, who would have the management of the charity estates, or alter the mode of dealing with them.

My attention was then called to sect. 6 of the Endowed Schools Act, 1874, which is an Act amending the Endowed Schools Act, 1869. That section is as follows:—"The powers of making schemes under the Endowed Schools Act, as amended by this Act, shall continue in force for a period of five years from the 31st of December, 1874, and during the continuance of such powers any Court or judge shall not, with respect to any endowed school or educational endowment which can be dealt with by a scheme under this Act and the Endowed Schools Acts, or any of such Acts, make any scheme or appoint any new trustees without the consent of the Committee of Council on Education." In my opinion, that does not interfere with the present case at all. It obviously means that where the Charity Commissioners have the power of doing it, the Court or judge shall not do it without the assent of the Committee of Council on Education, so that there shall not be two bodies of co-ordinate jurisdiction acting inconsistently with one another. The section refers only to an educational endowment which can be dealt with by a scheme under the Endowed Schools Acts. This part of the matter cannot be so dealt with. "Educational endowment," in this section, clearly means what I will call a pure educational endowment. Now, I am not going to interfere with

respect to the endowment of the school or the educational endowment. I am not going to appoint new trustees of them. If I appoint new trustees at all it is only of the old charity estates. The educational endowment consists merely of certain sums out of the charity estates and the school house. There is no other educational endowment.

It appears to me, therefore, that that section does not apply to the case of a mixed endowment, where by reason of the dissent of the governing body the Charity Commissioners cannot make a scheme affecting the property. Consequently, in my opinion, the jurisdiction remains.

I have not adverted to two other points which passed through my mind during the discussion. The first is, that where there is a special Act of Parliament for the government of a particular school, I am by no means clear that that special jurisdiction is taken away by these general words. The second is, that where there is a plain jurisdiction vested in any Court, it will require equally plain words to take it away. These are both considerations which, perhaps, would lead me to the same conclusion to which I have been lead irrespective of them.

The next question is, whether I ought to exercise the jurisdiction? The way it has been put on the part of the Attorney-General is this: it is said, "the only reason the Charity Commissioners cannot exercise their jurisdiction is, that the master will not consent to their exercising it; is he to come here and ask the Chancery Division to do the same thing which can be done by the Charity Commissioners with his consent"? The fallacy of that proposition is, that it is not the same thing, but a different thing. The master says, "I will not agree to the Charity Commissioners exercising jurisdiction, because I cannot trust them; I have had a quarrel with them; they may appoint somebody else, leaving me out in the cold altogether; they may appoint trustees, as to whose appointment I shall have no voice whatever; I prefer that the jurisdiction shall be exercised by the Chancery Division, which has no animus or bias in the matter either way; and I think the trustees would be better appointed, and better directions given as to the management thereof, by the Chancery Division than by the Charity Commissioners." It is not for me to say that that is absurd, or that the master is so wholly wrong in his preference, that it is improper to exercise the jurisdiction vested in the Court, there being a proper case for its exercise, because he has not chosen to submit to another jurisdiction as to which the legislature have given him an option. The very meaning of giving a governing body an option is, that the governing body may exercise it either way. The governing body having exercised it adversely to the jurisdiction of the Charity Commissioners, it is not, in my opinion, right for the Court, which then has exclusive jurisdiction, to decline to exercise it, if the case is a proper one, merely because the governing body refuses its assent to the other jurisdiction. It seems to me, therefore, that I ought to exercise it, and I intend to exercise it, by referring it to Chambers to appoint trustees for the management of the charity property, and to inquire whether it would be proper that the legal estate should be vested in the official trustee, or in what other persons or person.

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ATTORNEY-GENERAL C. LEAGE (a).

Chanc. Div.—Kay, J.

(12 Dec. 1881.)

*An Act of Parliament provided that a stipend of 120*l.* should be paid to the rector of St. Luke's, Cripplegate, out of certain burial fees to be received thereunder by the churchwardens, and that any deficiency should be supplied out of public monies in the hands of the churchwardens belonging to the parish not arising by any poor rate or other pound rate.*

It was held that charities for the poor of the parish generally, or applicable for a particular class of such poor, as widows and children, or applicable for the benefit of the poor in a particular manner, as in distributing coals, clothing, &c., or for church repairs, were not public monies liable to payment of the rector's stipend.

It was held also that the funds of such charities were not constituted public monies for this purpose by a subsequent Poor Law Act, which directed that they should be applied in aid of the poor rate.

The only monies chargeable with the stipend were monies belonging to the parish beneficially for its general purposes.

THIS was an *ex officio* information by the Attorney-General on behalf of certain charities for the purpose of having it determined whether they were chargeable with 120*l.*, being part of the stipend of the rector of St. Luke's, Cripplegate.

The charities in question were charities held by the vicar and churchwardens, or the churchwardens and overseers, to be applied for the benefit of the poor of the parish, either generally or in a particular way. They are classified in the judgment.

The rector's stipend of 120*l.* was payable under an Act of 6 Geo. II. c. 21, passed in 1732. At that date the parish of St. Luke's formed what was then known as the Lordship portion of the Parish of St. Giles, Cripplegate, the remaining part of the parish being called the Freedom portion. The Act, after stating certain earlier Acts, recited that a new church had been built in the Lordship part of St. Giles, and a burying-place provided, and that the Lordship part had been made a district of a new parish, and that it had churchwardens, overseers, &c., and distinct rates.

The Act then recited that the churchwardens, overseers, and other parish officers in the Lordship part and the other principal inhabitants were desirous of providing maintenance for the rector of the new church, and had agreed that the yearly sum of 120*l.* tax free should be raised and paid for that purpose. It was then enacted that "for and towards raising the said yearly sum of 120*l.* agreed to be raised within the said district and paid towards the maintenance of such rector" certain burial fees should be paid in future to the churchwardens.

The Act further provided "that for and towards the further maintenance of the rector for the time being of the said church, the churchwarden or churchwardens for the time being of the said church, and new intended parish shall . . . yearly and every year for ever, well and truly pay, or cause to be paid, out of any parish monies in his or their hands unto such rector the yearly sum of 120*l.* . . . ; and the monies so paid shall be allowed to such churchwarden or church-

(a) Extracted from the files of the Charity Commissioners.

wardens in his or their accounts, out of the monies to be by him or them received in pursuance of this Act; and in case such monies shall happen to be deficient for that purpose, then out of any other public money in his or their hands, belonging to the said parish, not arising by any poors rate or other pound rate, as the major part of the vestrymen assembled shall direct and appoint, and which other money shall be replaced or made good out of the next surplus of the burial monies aforesaid."

It also enacted "that all and every the succeeding churchwarden and churchwardens of the said parish shall be chargeable with, and subject and liable to make good, and to pay and satisfy, out of any parish monies in his or their hands, all arrears of the said yearly sum of 120*l.* accrued or happening in the time of any of his or their predecessors," not more than one year's payment being recoverable at one time. And it provided further "that all charities, gifts, and donations that have before the making of this present Act been given and granted to the said parish of St. Giles, Cripplegate, shall from time to time, and at all times hereafter, after the consecration of the said church, be received, held, and enjoyed by the vicar, churchwarden, or churchwardens of the said new intended parish, by such shares and proportions, and by the same ways, means, and methods, as they were done before the passing of this present Act."

In 1808, 48 Geo. III. c. xcvi was passed. It was intituled "An Act for making more effectual provision for maintaining, regulating, and employing the poor of the parish of St. Luke, in the county of Middlesex." It recited 6 Geo. II. c. 21, and that its provisions had long since been carried into effect; that the inhabitants of the parish had greatly increased, and that debts had been incurred for monies borrowed and expended under that Act, and that the provisions thereby made for the relief of the poor were inadequate, and required amendment. The Act then made the rector, churchwardens, and overseers guardians of the poor, and provided for the levying of rates, and enacted that monies so raised should be applied in discharging the debts owing by the parish, and in maintaining and relieving the poor, &c., and for any purposes necessary for carrying the Act into execution. All lands, buildings, monies, &c., held under 6 Geo. II. c. 21, and other Acts therein recited, in trust for the parishioners or vestrymen of the parish or other persons "for and towards the relief, maintenance, and use and benefit of the poor of the said parish, or for any other purpose whatsoever in which the said parish is interested," were then vested in the guardians of the poor acting in the execution of that Act, "subject nevertheless to be used, possessed, applied, and disposed of, only upon the trusts, and for the uses and purposes and in the manner by and in this Act directed, declared, and appointed."

Sect. 76 was as follows: "All gifts, donations, benefactions, and sums of money whatsoever, now payable, or which shall hereafter become payable, for and to the use of the poor of the said parish, not being directed, or liable to be applied for the support of any private or particular poor or charity, or by the respective donors, or otherwise, particularly appropriated, and not being sacramental money, shall from time to time, from and after the appointment of the said guardians to the poor, be paid into the hands of their treasurer or treasurers for the time being, for the use of the poor of the said parish to be applied in aid of the rate for the relief of the poor thereof, unless the said guardians shall think proper, from time to time, to appropriate and

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apply the same, or some part thereof, to and in relieving or assisting any indigent, aged or industrious parishioners who have not become chargeable to the said parish."

In 1857 an action of *Saunders v. Howes* was brought by the rector against the churchwardens for payment of the stipend, and a special case was stated. The Attorney-General was not a party to that action, and the charities were not represented.

Kay, J.—This is an *ex officio* information by the Attorney-General on behalf of certain charities.

The question to be determined is whether under the Act of Parliament the charity funds are charged with 120*l.* a-year being part of the stipend of the Rector of St. Luke's, Cripplegate.

In 1732, at the date of the Act 6 Geo. II. c. 21, the parish of St. Giles, Cripplegate, consisted of two portions called the Lordship portion and the Freedom portion.

There were numerous charities founded in ancient times by benefactions of private persons of which the vicar and the churchwardens or the churchwardens and overseers were trustees, and which for the purpose of this case may be classified thus: (1) Charities for some particular class of poor, as poor widows or poor children; (2) Charities for the poor of the parish to be distributed in a particular mode, as in wood and coal, or in providing gowns or the like; (3) Charities for the poor of the parish generally; (4) One at least (Sworder's Charity) for repair of the church; (5) Charities, the origin of which was lost, but which had by usage been applied for the benefit of the poor of the parish generally.

It is doubtful whether there was any property belonging to the parish producing annual income which might be applied to any of its purposes except fines paid by persons who refused to serve parochial offices. These are mentioned in the first Act, and amounted, it is said at a later period, to about 160*l.* a year.

That being the condition of things in 1732, the first Act, 6 Geo. II. c. 21, was passed. [His Lordship stated the provisions of the Act and proceeded:—]

Upon that Act it has been argued, (1) that all the separate classes of charity monies I have referred to are charged with the 120*l.* by this Act, (2) that at any rate the charities for the poor generally are so charged.

To the first argument I am altogether unable to assent. Under the Act the stipend is to be paid in the first instance out of parish money, and is to be allowed in account out of the burial fees, and if they are not sufficient out of public money other than rates. Parish money may have a larger meaning than public money other than rates; probably it includes rates. But whatever be its meaning it is only a fund for temporary payment. The fund really chargeable, if the burial fees should prove deficient, is the public money belonging to the parish other than rates. To say that a charity for the benefit of poor widows is "public money belonging to the parish" or even "parish monies," out of which the parish authorities are to fulfil the obligation of paying 120*l.* to the rector "agreed to be raised within the said district," in the absence of an express declaration to that effect, seems to me extravagant.

The second point is more plausible. The fund is described as "public money in his or their hands belonging to the said parish not arising by any poor rate or any pound rate," and it may be said that the

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exception shows that "public money" as there used would, but for such exceptions, have included poor rate. But assuming that, does it follow that it would include money left on trust for the poor? Such a trust, it is well settled, is for such of the poor only as do not receive parish help, that is, for those who take no part of the poor rate (*Att.-Gen. v. Clarke*, Amb. 421; *Att.-Gen. v. Corporation of Exeter*, 2 Russ. 45; 3 Russ. 395; *Att.-Gen. v. Wilkinson*, 1 Beav. 370). The poor rate may be considered public money, not so much because of its object, as because it is levied from the bulk of the community; moreover, it is not charity money at all, but public money raised by a public levy under the authority of law. But if this money is public money within the meaning of this Act, I cannot from that conclude that money held on trust, which cannot be applied to the object of a poor rate, must be considered public money also.

My conclusion upon this Act is that nothing is within the meaning of "public money," except such as the parish, by which I mean the whole community of the parish, is beneficially entitled to for its public purposes.

To the action of *Saunders v. Howes*, the Attorney-General was no party. It has therefore been argued properly enough that nothing then decided can be binding on the Court in this proceeding which is an *ex officio* information by the Attorney-General. I have, however, studied the shorthand notes of that case, and I think their Lordships came to the same conclusion as to the effect of the Act as that which I have intimated.

[His Lordship then stated the provisions of 48 Geo. III. c. xcvi, and continued:—]

It is argued that all monies which by the 76th section of 48 Geo. III. c. xcvi must be applied in aid of the rate for the relief of the poor thereby become *ipso facto* public money of the parish, and thus, even though not before liable, they become incidentally liable to the charge of this 120*l.* stipend.

It seems to me impossible to attribute any such intention to the legislature. This is a poor law statute; there is not a word in it to indicate an intention to make a provision for the rector's stipend. I understand that at the time of its passing the burial fees were more than sufficient to provide for payment of the 120*l.*, and no question had arisen concerning it. The former Act excepted poor rates from the incubus of this charge, and it would be very strange that a fund appropriated by the later Act in aid of poor rates should be made liable to that from which poor rate was expressly exempted. That would be taking so much from the ratepayers' fund and increasing the rate to the same amount, and thus practically throwing the charge upon the rates. Moreover, sect. 76 is a diversion of the charity fund from the original purpose, and an appropriation of it to another purpose. In terms the appropriation is specific and complete; and I cannot infer an intention to apply any part of it to any other purpose. The effect of the Act may, no doubt, be to impose such a charge; but I must hold that if there be nothing from which that intention can be implied, it is not the duty of any Court to give effect to such a possible construction of the Act, unless the words compel it. Do they do so in this case? The argument may be stated thus:—Poor rate was not charged with the stipend; charities for the poor generally were not so charged; but when such charities were diverted by a poor law to be applied in aid of poor rate, they became subject to the charge, because they became public money. I ask why are

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monies provided by private charity, and which by this statute are diverted from their original purpose and applied to relieve the poor rates, to be considered public monies? They are not public monies like poor rates, either by reason of their origin, or by reason of their being levied under the authority of the law. The only ground for considering them public monies is their new and more extensive application. To my mind that is not sufficient. I am not satisfied even that a bequest of monies to be applied in aid of the poor rate after the passing of the Act of Geo. II. would be subject to the charge of the rector's stipend. But if it were so, it does not follow that the effect of the Acts is to make this money so liable. My opinion is that the burden of showing this is upon those who make the claim, and that it does not appear sufficiently clear that this charge is thrown on the monies to justify me in so holding. It would have been so very easy to express that in the Act of Parliament. Even a statement that the moneys were to be considered public moneys would have been something in favour of the argument. There is not a word in the later statute showing that such was the intention of the legislature, and I cannot feel justified in holding that the language so clearly imposes this charge that this result must follow, even though not intended to be the effect of this statute.

I find from the shorthand notes in *Saunders v. Howes* that Erle, J. said, in the course of his judgment, "All the parish can, under the 48th of Geo. III., specifically appropriate to poor rates, are clearly, to my mind, parish moneys." Looking to the argument and the ultimate decision, I think he was referring only to parish money properly so called which had been applied in aid of the rates. I think the dictum referred only to charities which belonged to the parish beneficially. There is no decision that any others were liable.

I must, therefore, declare that none of the charity funds in which any of the inhabitants of the parish are interested are liable to the charge of 120*l.* for the rector's stipend, except such, if any, as belong to the parish beneficially for its general purposes. And to make the meaning of this declaration clear, I will add, if necessary, that none of the classes of charity I have described, namely, those which by original destination, or, in the absence of such, by immemorial usage, have been applicable for the poor generally, or for any particular class of poor, or for the repairs of the church, are so liable.

The declaration ultimately made was:—"That none of the charity funds in which any of the inhabitants of the parish are interested are liable to the charge of 120*l.* for the rector's stipend, except such, if any, as belong to the parish beneficially for its general purposes."

NOTE A.

DIRECTORY POWERS.

Provisions in powers construed as directory.

It is stated in the text of this work (*ante*, p. 178) that "in cases of charitable trusts where the Courts have adopted a greater latitude of construction than in ordinary cases, directions to appoint new trustees on the happening of a certain event have been considered to be merely directory, and not to confine the exercise of the power to the happening of that event only." This is a point which requires more detailed examination.

The question is one of construction, and may arise in the case of any power, whether it is a power of appointing new trustees or whether it is a power for any other purpose, and whether it is contained in a will, trust, deed, charter, Act of Parliament, or order of the Court.

For the present purpose powers may be considered as divided into two classes.

The first class comprises powers which are determinable on the happening of a certain event, or which are exerciseable only subject to the observance of certain conditions. In this case, as soon as the event happens the power ceases to exist, or, until the conditions are satisfied, it does not arise. Outside the specified limits, therefore, there is no power which can be exercised.

In the second class of cases the power conferred is general; but there is an incidental direction that it shall be exercised at a certain time or within a certain period. Here the direction does not restrict the exercise of the power, but merely prescribes a certain occasion on which it is intended that at all events it shall be exercised. Although, therefore, it may be a wrongful act on the part of the donees not to exercise the power in accordance with the direction, yet, notwithstanding the failure so to do, the power itself continues to subsist. In such a case the incidental direction is said to be merely "directory."

An instance will make the distinction clear. A power to appoint a new trustee, to be exercised within four months after the death of a trustee and not after, is clearly a power to appoint a trustee, which only subsists during the limited period. It cannot, therefore, be exercised afterwards. On the other hand, a power to appoint a new trustee, coupled with a direction that it shall be exercised within four months after the death of a trustee, is a general power exerciseable at any time, whether within or without the period specified, the restriction as to the four months being a mere direction to the trustees as to the time within which it is desired that the power shall be exercised.

In *Att.-Gen. v. Floyer*, 2 Vern. 748, a rent-charge of 100*l.* and the right to nominate a minister were devised to six trustees and their heirs in trust for the perpetual maintenance of the minister. And the testator directed that when the trustees were reduced to the number of three they should choose others. It was held that notwithstanding this direction an appointment of new trustees could be made by a sole surviving trustee. Lord Harcourt, C., said: "It is only directory to the trustees that when reduced to three they should fill up the number of trustees; and therefore, although they neglected so to do, that would not extinguish or determine their right."

In *Doe v. Roe*, 1 Anstr. 86, the trust deed of a Wesleyan chapel provided "that when, by death or otherwise, the number of the said trustees should be reduced to fifteen, then the said remaining fifteen trustees, or the majority of them, or the survivors or survivor of them, shall proceed to elect, &c.," so as to make up the number of trustees to twenty-five, and to convey to the whole body so completed. It was held that the power could be exercised when the number of trustees had been reduced to seventeen, the meaning of the deed being that when the number of trustees was reduced to fifteen the trustees were to be compellable to make an election, but that they were not precluded from making it sooner if they thought right.

Att.-Gen. v. Scott, 1 Ves. Sen. 413, was another case of the same kind. There the question turned on the construction of a decree of the Court. The decree had directed that twenty-five of the principal inhabitants of a parish should present and elect a proper person to a

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Note A.

Question of
construction.

Division of
powers.

Strict.

Directory.

Distinction.

*Att.-Gen. v.
Floyer.*

Doe v. Roe.

*Att.-Gen. v.
Scott.*

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Note A.**

living, they being thereby appointed trustees to meet for that purpose within four months after the death of the incumbent, with directions to keep the trust filled up. It was held to be no objection to an election that the meeting was held outside the four months.

Lord Hardwicke said: "As to the first objection that the meeting was held after the four months, that, I am of opinion, is not sufficient; for though it is true there is such a direction in the decree, yet that is only directory; and if all the surviving trustees had met after the four months on a proper summons it would be very good; and proper to be compared to the case of the *Borough of Landsdown* in Roll. Abr., which has been since held to be law, where the election was to be by a select number within eight days, and they did not meet till long after: it was held only directory, and that by their constitution they had a general power of electing. So here, the trustees having the advowson vested in them, it was incident to that legal estate vested in them, it was not intended to take away that right; and the ground was in that case that the words were affirmative and not negative."

Act of Parli-
ament.

The same principle of construction which applies in the case of a trust deed or an order of the Court applies also in the case of an Act of Parliament: *Doe v. Godwin*, 1 Dow. & Ry. 259, cited *infra*.

Principle
applies to
private trusts.

The above-mentioned cases were cases of charitable trusts. But the application of the principle is not confined to them. Thus a trust for sale with a direction to execute it within four years has been held to authorize a sale after the expiration of that time: *Witchcot v. Zouch*, 10 Hare, 288, n. So also a trust "with all convenient expedition, and within five years after my decease," to sell, &c., where the sale was to be made for payment of debts: *Pearce v. Gardner*, 10 Hare, 287.

The ground of the last-mentioned decision was that there was nothing in the will importing a negative on a sale being effected by the trustees after the expiration of five years; that it was a question of construction whether the words directing that the sale should take place "with all convenient speed, and within five years" were directory, merely indicating the time within which the testator desired that the trust should be executed, or whether they were imperative that the trustees should effect the sale within and not after the five years; and that the true construction of the will was that the words were directory. See *Cuff v. Hall*, 1 Jur. N. S. 972; *Warburton v. Sandys*, 14 Sim. 622, where the question was as to the appointment of new trustees.

Lapse of time.

Even if the provisions of a power of appointing new trustees are not construed as merely directory, but as confining the exercise of the power to the particular circumstances under which it is expressed to be given, still lapse of time may preclude any objection being taken.

*Att.-Gen. v.
Cuming.*

In *Att.-Gen. v. Cuming*, 2 Y. & C. C. C. 139, an advowson was vested in nine trustees upon trust as an avoidance should occur to take steps as therein mentioned for the election of a vicar. The trust deed contained a declaration that upon the death of any of the trustees the survivors should from time to time, when and as often as they should think fit, before the trustees should be reduced to five, or within three months after they should be reduced to four, appoint new trustees, and convey the premises to them, so as to complete the number of nine trustees. The trustees having become reduced to two the survivors appointed new trustees. *Knight-Bruce, V.-C.*, held that the

validity of this appointment could not be disputed after the lapse of more than seventeen years.

The principle that a particular provision is directory only and not restrictive applies not only as regards the effect of a particular direction in a power upon the whole power, but as regards the effect of a particular power upon the operation of the other provisions of the same instrument.

Thus, the insertion in any instrument of a power to appoint new trustees does not mean that the trusts of the instrument cannot be executed unless the number of trustees is kept filled up. The power in an ordinary case is directory merely, and not restrictive of the other provisions of the instrument.

Doe v. Godwin, 1 Dow. & Ry. 259, was a strong case of this kind, turning on the construction of an Act of Parliament. The Act provided that in case any one or more of the trustees to be elected as therein mentioned should die, "then and in every such case the survivors or survivor of them shall, and he and they are, and is hereby required from time to time to elect, nominate, or appoint some other person or persons in the stead or place of the person or persons so dying."

It was held that the surviving trustees might act in the trusts notwithstanding that upon the death of one the provision as to electing new trustees had not been complied with. Abbott, C. J., was of opinion that the provisions of the Act, although of a higher character and more important than, were nevertheless, in this respect, analogous to, the powers contained in a private settlement to fill up the vacancies occasioned by death for the execution of the trust. It was accordingly held that the clause was directory only.

It may, however, appear upon the construction of the instrument that the execution of the trusts is conditional on the full number of trustees being kept up, and that a less number are incapable of acting.

Foley v. Wontner, 2 J. & W. 245, seems, so far as can be gathered from the report, which is very obscure, to have been a case of this kind. It appears that there the full number of trustees of a dissenting chapel had not been kept up, and Lord Eldon said (at p. 247), "Having neglected to fill up the vacancies, there is no one now who has any power. I apprehend, neither the congregation nor any one else can fill them up: it must be done by the Court:" and see *Att.-Gen. v. Bishop of Litchfield*, 5 Ves. 825.

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Note A.

Principle applies as between particular power and other provisions of instrument.

Doe v. Godwin.

Less than full number of trustees incapable of acting.

Foley v. Wontner.

NOTE B.

MEANING OF INHABITANTS AND PARISHIONERS.

(See pp. 208, 209, *ante*.)

The Courts have frequently been called upon to determine the meaning of the words "inhabitant" and "parishioner." An analysis of the decisions may be useful.

The cases have sometimes turned on the meaning of "inhabitant" or "parishioner" alone. More frequently the words requiring to be interpreted have been "inhabitants and parishioners"; this expression being construed to mean "inhabitants who are also parishioners": *Fearon v. Webb*, 14 Ves. at p. 24.

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Note B.**

Prima facie
meaning of
"inhabitant."

"Inhabitant" *prima facie* includes every person dwelling in the parish or place in reference to which the word is used, whether a householder or not. Servants, lodgers, and persons supported by parish relief are consequently inhabitants, but not casual sojourners. See Steer's Parish Law, 5th ed. p. 17, citing *Holledge's Case*, 2 Roll Rep. 238.

Abbott, C. J., said (*Rex v. Hall*, 1 B. & C. at pp. 136, 137):—"The inhabitants of any county, city, or other place, taking that word either in its strict or in its popular sense, are those persons only who have their dwelling therein; and all persons who have their dwelling therein are inhabitants thereof." See also *Gateward's Case*, 6 Co. 59 b; *Att.-Gen. v. Clarke*, Amb. 422.

In *Att.-Gen. v. Parker*, 3 Atk. 576, Lord Hardwicke said (at p. 577):—"Inhabitants is still a larger word (than parishioners), takes in housekeepers though not rated to the poor, takes in also persons who are not housekeepers; as, for instance, such who have gained a settlement, and by that means become inhabitants."

Prima facie
meaning of
"parish-
ioner."

"Parishioner" includes all persons who occupy land and pay poor rate in the parish, whether they dwell there or not: *Jeffrey's Case*, 5 Co. 66 b; *Att.-Gen. v. Parker*, *supra*; *Batten v. Gedye*, 41 Ch. D. 507; and see *Hansard v. Parishioners of St. Matthew Bethnal Green*, 4 P. D. 46. In *Etherington v. Wilson*, 1 Ch. D. 160, it was held that a person who had contracted to take a house and pay rent, and had caused his name to be entered on the rate-book, and had paid a portion of the current rate, was a "parishioner."

How far pay-
ment of rates
necessary.

Whether the word includes any persons except such as pay poor rate is a question upon which the authorities are not quite clear.

A casual sojourner is not, it appears, a parishioner: Steer's Parish Law, 5th ed. p. 17.

In *Att.-Gen. v. Parker*, *supra*, Lord Hardwicke said (at p. 577):—"Parishioner is a very large word, takes in not only inhabitants of the parish, but persons who are occupiers of lands, that pay the several rates and duties though they are not resident nor do contribute to the ornaments of the church." He also said in the same case that it would not be unreasonable to confine the words "inhabitants and parishioners" to inhabitants paying scot and lot (i. e., church and poor rates). He, however, declined so to decide, and dismissed the information. Nor would he hold that the words must necessarily be confined to persons who would be entitled to attend a select vestry.

In each of the cases of *Att.-Gen. v. Rutter*, 2 Russ. 101, n., and *Edenborough v. Archbishop of Canterbury*, 2 Russ. 93, the question was who were entitled to vote at the election of a parson. In *Att.-Gen. v. Rutter* the right of voting was vested in the "inhabitants and parishioners"; in *Edenborough v. Archbishop of Canterbury* it was vested in the "parishioners." In the first of these cases there is nothing in the report to show that any evidence of usage was adduced. In the second of them such evidence was put forward, but the usage had not been uniform. Both cases must, therefore, be taken as decisions on the meaning of the words taken alone unassisted by any interpretation placed upon them by the conduct of the parties. In *Att.-Gen. v. Rutter*, "inhabitants and parishioners" were confined to persons paying church and poor rates. In *Edenborough v. Archbishop of Canterbury*, Lord Eldon said (at p. 104):—"Where the right of nominating a perpetual curate was given to the parishioners, a part of the parishioners could not, by their vote or declaration, so narrow the right of voting as to exclude those who did not pay church rates from

sharing in the election." (See also pp. 106, 107.) His Lordship, however, held, in the result, that looking at what might be fairly considered as constituting the vestry, the right of voting was in the parishioners rated to church and poor. A similar decision was arrived at in *Carter v. Cropley*, 8 De G. M. & G., see p. 681. See also *Att.-Gen. v. Dalton*, 13 Beav. 141, and *Faulkner v. Elger*, 4 B. & C. 449.

Lastly, the language used by Mellish, L. J., in *Etherington v. Wilson*, 1 Ch. D. at p. 167, goes to show that in his opinion the observations of Lord Hardwicke in *Att.-Gen. v. Parker* as to the meaning of "parishioners," although in terms they amounted merely to a statement that all ratepayers are parishioners, not that all parishioners are ratepayers, were nevertheless intended to be a definition, and consequently that "parishioners" and "ratepayers" are convertible terms.

The conclusion seems to be that *primâ facie* none but ratepayers are parishioners.

Fearon v. Webb (14 Ves. 13) was an exceptional case. There the election of a parson was vested in the inhabitants and parishioners "or the major part of the chiefest and discreetest of them." It was held that "chiefest" must be construed as meaning those who paid church and poor rates; and "discreetest" those who had attained the age of twenty-one years.

Neither "parishioner" nor "inhabitant," however, has a fixed legal meaning. Each is construed *secundum subjectam materiam*: *Att.-Gen. v. Forster*, 10 Ves. at p. 339. Its signification varies according to the circumstances under which it is applied: *Rex v. Mashiter*, 6 A. & E. 153. In the case of "inhabitant" especially, the *primâ facie* meaning is so wide that it would in almost all cases be quite impossible to construe the word according to the full extent of that meaning. See *Att.-Gen. v. Parker*, 3 Atk. at p. 577; *Withnell v. Gartham*, 6 T. R. at p. 398.

Thus, in cases of charitable gifts for the poor inhabitants of a place, the word is restricted to persons not in receipt of parochial relief: *Att.-Gen. v. Clarke*, Amb. 422; and see *ante*, pp. 104—106.

In the Stat. of Bridges (22 Hen. VIII. c. 5), "inhabitant" has been construed on the one hand to include all occupiers of land in the county, although actually living in another county, and on the other hand not to include servants, lodgers, or inmates, although actually dwelling in the county: *Rex v. Hall*, 1 B. & C., at pp. 136, 137; *Att.-Gen. v. Forster*, 10 Ves., at p. 339. See also 2 Inst. 702; *Jeffrey's Case*, 5 Co. 66b, as to church rates.

Similarly, the context and object of a charter giving a benefit to the "inhabitants" of a place must be taken into consideration in determining the meaning which is to be placed upon the word: see *Rex v. Mashiter*, 6 A. & E. at p. 165, per Littledale, J.; *Rex v. Dane*, 6 A. & E. 374.

In *Chilton v. Corporation of London*, 7 Ch. D. 735, Jessel, M. R., was of opinion (see p. 744), although the case was not decided on that point, that a grant to the inhabitants of a parish meant the inhabitants of houses within the parish, and was restricted to houses lawfully erected, and did not apply to houses which had been illegally erected on common land and might be levelled at any moment.

So, also, evidence of usage is admissible for the purpose of determining in what sense the word "inhabitant," or the word "parishioner," or the words "inhabitants and parishioners" are used: see *Rex v. Mashiter*, 6 A. & E. at p. 165, per Littledale, J.

Evidence of this kind, that is, evidence of a common consent among

App. III.
Note B.

Result of cases.

"Chiefest and discreetest."

"Inhabitant" and "parishioner" construed *secundum subjectam materiam*.

"Inhabitant" confined to persons not receiving parochial relief.

Extended to occupiers not resident.

Context and object of charter.

Evidence of usage.

**App. III.
Note B.**

How far con-
clusive.

Whether
rates must
have been
actually paid.

Householders.

the persons entitled to vote (see *Edenborough v. Archbishop of Canterbury*, 2 Russ. at p. 100), has been put forward in most of the cases in which the question has been whether the right of voting at an election of a person is restricted to ratepayers or not.

If there is evidence of uniform usage, that is conclusive (*Att.-Gen. v. Forster*, 10 Ves. at p. 338), but not, of course, where the usage has varied (*Edenborough v. Archbishop of Canterbury*, 2 Russ. 93, 104, 107).

In *Att.-Gen. v. Dary*, cited 3 Atk. at p. 577, Lord Hardwicke held that "inhabitants" must be confined to persons paying church and poor rates. See also *Rex v. Dana*, 6 A. & E. 374.

So, also, in the case of the words "inhabitants and parishioners." If, on the one hand, the usage has been to confine the right of voting to ratepayers, they alone can take part in the election: *Att.-Gen. v. Newcombe*, 14 Ves. 1; *Edenborough v. Archbishop of Canterbury*, 2 Russ. 93. If, on the other hand, the usage has been to extend the right to persons who are not ratepayers, then such persons cannot be excluded: *Att.-Gen. v. Parker*, 3 Atk. at p. 577.

Assuming that "inhabitant," or "parishioner," or "inhabitants and parishioners," are confined to ratepayers, a further question arises whether it is necessary that a rate should actually have been paid, or whether it is sufficient that a person is liable to be rated. It appears that where the qualification of being a ratepayer is required, it is not attained until a rate has been actually paid. In *Att.-Gen. v. Forster*, 10 Ves. at p. 339, Lord Eldon said, "As to the word 'pay' there is no doubt, in a strict sense, persons paying are those who have paid. But in a popular sense persons paying to church and poor may be understood persons liable to pay; and if, in ordinary parlance, persons liable to pay were excluded, the greater part would be excluded." In *Edenborough v. Archbishop of Canterbury*, 2 Russ. at pp. 110, 111, the same judge held that a person who came into the parish after a rate had been made had no right to vote as a "parishioner" before another rate had been made, unless the making of the rate had been postponed for an unfair purpose.

In *Etherington v. Wilson*, 1 Ch. D. 160, a payment in respect of rate had actually been made. Mellish, L. J., however, treated the question as depending on whether the person claiming to be a parishioner was liable to be rated. He said (at p. 168): "The question whether he is actually rated or not is immaterial; but so far the fact of his being rated confirms the evidence that he was the occupier." Where the usage has been that the qualification shall be satisfied by assessment only, not followed by actual payment, that will be upheld: *Att.-Gen. v. Newcombe*, 14 Ves. 1.

"Householders" is not so strict a word as "housekeepers," but it excludes servants, lodgers, or inmates, who have no permanent interest in the place, but only a temporary residence: *Rex v. Hall*, 1 B. & C. at p. 137. Partners carrying on business, but not dwelling in a city, and paying rates in respect of their place of business, are householders: *ibid.*, at p. 138.

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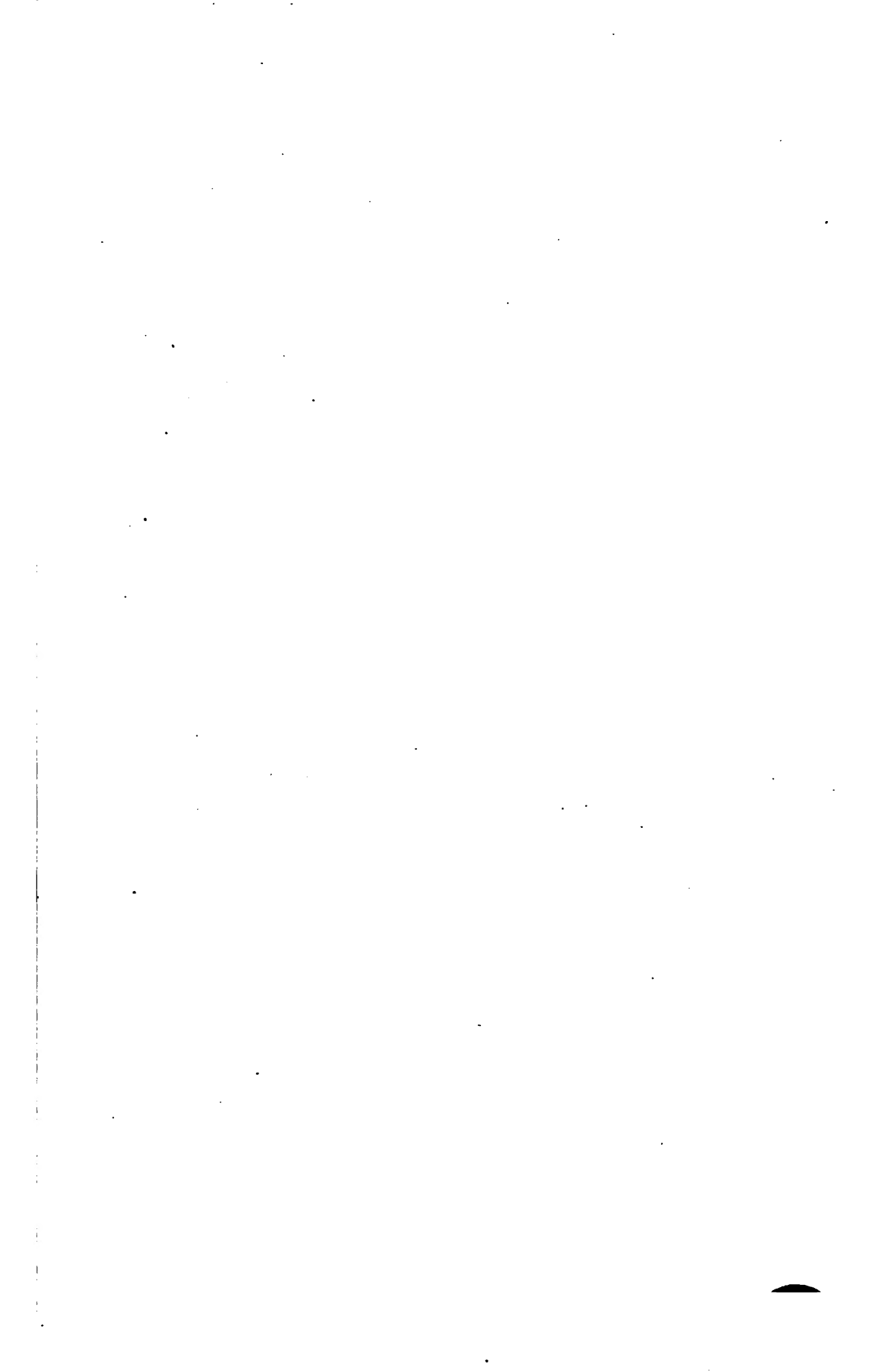
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